TITLE 50—WAR AND NATIONAL DEFENSE

Chap.		Sec.
35.	International Emergency Economic Powers [New]	1701
36	Foreign Intelligence Surveillance [New]	1801

CHAPTER 3—ALIEN ENEMIES

§ 21. Restraint, regulation, and removal

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22 of this title; sections 9, 34, 1981, 1982 of Appendix to this title; title 5 section 8332.

§ 22. Time allowed to settle affairs and depart

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9, 34, 1981, 1982 of Appendix to this title; title 5 section 8332.

§ 23. Jurisdiction of United States courts and judges

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9, 34, 1981, 1982 of Appendix to this title; title 5 section 8332.

§ 24. Duties of marshals

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9, 34, 1981, 1982 of Appendix to this title; title 5 section 8332.

CHAPTER 4C—ATOMIC WEAPONS AND SPECIAL NUCLEAR MATERIALS INFORMATION REWARDS

§ 47b. Determination by Attorney General of entitlement and amount of reward; consultation; Presidential approval

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

CHAPTER 5—ARSENALS, ARMORIES, ARMS, AND WAR MATERIAL GENERALLY

SUBCHAPTER III—ACQUISITION AND DEVELOPMENT OF STRATEGIC RAW MATERIALS

Sec.	
98.	Short title.
98a.	Congressional findings and declaration of purpose.
98b.	National Defense Stockpile. (a) Determination of materials; quantities. (b) Guidelines for exercise of Presidential authority. (c) Quantity revision; notification to Congressional committees.
98c.	Materials constituting the National Defense Stockpile.
98d.	Authority for stockpile operations. (a) Funds appropriated for acquisitions. (b) Disposal. (c) Authorization of appropriations.
98e.	Stockpile management. (a) Presidential powers. (b) Federal procurement practices. (c) Barter; use of stockpile materials as payment for expenses of acquiring, refining, processing or rotating materials. (d) Waiver; notification of proposed disposal of materials. (e) Leasehold interests in property.
98f.	Special Presidential disposal authority.
98g.	Materials development and research.
98h.	National Defense Stockpile Transaction Fund. (a) Establishment. (b) Fund operations. (c) Moneys received from sale of materials being rotated or disposed of.
98h-1.	Advisory committees.
98h-2.	Reports to Congress [New].
98h-3.	Definitions [New].
98h-4.	Importation of strategic and critical materials [New].

SUBCHAPTER III—ACQUISITION AND DEVELOPMENT OF STRATEGIC RAW MATERIALS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 541, 542 of this title; section 2093 of Appendix to this title; title 7 sections 1301, 1347, 1743, 1745, 1856; title 15 section 714b; title 30 section 683; title 31 section 405a-1; title 40 section 474; title 42 section 5821.

§ 98. Short title

This subchapter may be cited as the "Strategic and Critical Materials Stock Piling Act".

(June 7, 1939, ch. 190, § 1, as added July 30, 1979, Pub. L. 96-41, § 2(a), 93 Stat. 319.)

PRIOR PROVISIONS

A prior section 98, acts June 7, 1939, ch. 190, § 1, 53 Stat. 811; July 23, 1946, ch. 590, 60 Stat. 596, which related to declaration of Congressional policy in enacting this subchapter, was repealed by section 2(a) of Pub. L. 96-41.

SHORT TITLE OF 1979 AMENDMENT

Section 1 of Pub. L. 96-41 provided: "That this Act [enacting sections 98 to 98h-3 of this title, redesignat-

ing former section 98h-1 of this title as 98h-4 of this title, amending section 2093 of the Appendix to this title, sections 1743 and 1745 of Title 7, Agriculture, section 741b of Title 15, Commerce and Trade, and section 485 of Title 40, Public Buildings, Property, and Works, enacting a provision set out as a note under this section, and repealing a provision set out as a note under this section] may be cited as the 'Strategic and Critical Materials Stock Piling Revision Act of 1979'."

SHORT TITLE

Act June 7, 1939, ch. 190, § 11, formerly § 10, as added by act July 23, 1946, ch. 590, 60 Stat. 596, and renumbered by Pub. L. 92-156, title V, § 503(1), Nov. 17, 1971, 85 Stat. 427, which provided that this Act, which enacted this subchapter, be cited as the "Strategic and Critical Materials Stock Piling Act", was repealed by Pub. L. 96-41, § 2(b)(2), July 30, 1979, 93 Stat. 324.

NEW BUDGET AUTHORITY

Section 4 of Pub. L. 96-41 provided that: "Any provision authorizing the enactment of new budget authority contained in the amendments made by this Act [see Short Title of 1979 Amendment note above] shall be effective on October 1, 1979."

EX. ORD. NO. 12155. DELEGATION OF FUNCTIONS OF PRESIDENT

Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071, provided:

By the authority vested in me as President of the United States of America by the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98 et seq.), and by Section 301 of Title 3 of the United States Code, and in order to provide for the performance of certain functions previously performed by agencies pursuant to their own authority, it is hereby ordered, effective July 30, 1979, as follows:

1-101. The functions vested in the President by Section 3 of the Strategic and Critical Materials Stock Piling Act, as amended, hereinafter referred to as the Act (50 U.S.C. 98b), are delegated to the Director of the Federal Emergency Management Agency.

1-102. The functions vested in the President by Section 6 of the Act (50 U.S.C. 98e) are delegated to the Administrator of General Services.

1-103. (a) The functions vested in the President by Section 8(a) of the Act (50 U.S.C. 98g(a)) are delegated to the Secretary of the Interior.

(b) The functions vested in the President by Section 8(b) of the Act (50 U.S.C. 98g(b)) are delegated to the Secretary of Agriculture.

1-104. The functions vested in the President by Section 10 of the Act (50 U.S.C. 98h-1) are delegated to the Administrator of General Services.

1-105. The functions vested in the President by Section 11 of the Act (50 U.S.C. 98h-2) are delegated to the Director of the Federal Emergency Management Agency. The Secretaries of the Interior and of Agriculture and the Administrator of General Services shall submit biannually a written report to the Director. The report shall detail their performance of functions under the Act and this Order.

1-106. Section 4-101 of Executive Order No. 12148 [set out as a note under section 2251 of the Appendix to this title] is revoked and the following new Sections 4-205 and 4-206 are added thereto:

"4-205. Effective July 30, 1979, the functions vested in the President by Section 4(h) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b(h)), are hereby delegated to the Director of the Federal Emergency Management Agency."

"4-206. Effective July 30, 1979, the functions vested in the President by Section 204(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485(f)), are hereby delegated to the Director of the Federal Emergency Management Agency.".

JIMMY CARTER.

§ 98a. Congressional findings and declaration of purpose

(a) The Congress finds that the natural resources of the United States in certain strategic and critical materials are deficient or insufficiently developed to supply the military, industrial, and essential civilian needs of the United States for national defense.

(b) It is the purpose of this subchapter to provide for the acquisition and retention of stocks of certain strategic and critical materials and to encourage the conservation and development of sources of such materials within the United States and thereby to decrease and to preclude, when possible, a dangerous and costly dependence by the United States upon foreign sources for supplies of such materials in times of national emergency.

(June 7, 1939, ch. 190, § 2, as added July 30, 1979, Pub. L. 96-41, § 2(a), 93 Stat. 319.)

PRIOR PROVISIONS

A prior section 98a, acts June 7, 1939, ch. 190, § 2, 53 Stat. 811; July 23, 1946, ch. 590, 60 Stat. 596; 1953 Reorg. Plan No. 3, § 2(b), eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634; 1958 Reorg. Plan No. 1, § 2, eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799; Oct. 21, 1968, Pub. L. 90-608, § 402, 82 Stat. 1194; Ex. Ord. No. 11725, § 3, eff. June 29, 1973, 38 F.R. 17175, which related to determination of strategic and critical materials, the quantity and quality to be purchased, formation and functions of industry advisory committees, and the subsistence and traveling expenses of members of those committees, was repealed by section 2(a) of Pub. L. 96-41.

Provisions similar to those comprising this section were contained in former section 98 of this title prior to repeal of that section by Pub. L. 96-41.

§ 98b. National Defense Stockpile

(a) Determination of materials; quantities

The President shall determine from time to time (1) which materials are strategic and critical materials for the purposes of this subchapter, and (2) the quality and quantity of each such material to be acquired for the purposes of this subchapter and the form in which each such material shall be acquired and stored. Such materials when acquired, together with the other materials described in section 98c of this title, shall constitute and be collectively known as the National Defense Stockpile (hereinafter in this subchapter referred to as the "stockpile").

(b) Guidelines for exercise of Presidential authority

The President shall make the determinations required to be made under subsection (a) of this section on the basis of the following principles:

(1) The purpose of the stockpile is to serve the interest of national defense only and is not to be used for economic or budgetary purposes.

(2) The quantities of the materials stockpiled should be sufficient to sustain the United States for a period of not less than three years in the event of a national emergency.

(c) Quantity revision; notification to Congressional committees

The quantity of any material to be stockpiled under this subchapter, as determined under

subsection (a) of this section, may not be revised unless the Committees on Armed Services of the Senate and House of Representatives are notified in writing of the proposed revision and the reasons for such revision at least thirty days before the effective date of such revision.

(June 7, 1939, ch. 190, § 3, as added July 30, 1979, Pub. L. 96–41, § 2(a), 93 Stat. 319.)

PRIOR PROVISIONS

A prior section 98b, acts June 7, 1939, ch. 190, § 3, 53 Stat. 811; July 23, 1946, ch. 590, 60 Stat. 597; Aug. 2, 1946, ch. 753, title I, §§ 102, 121, 60 Stat. 815, 822; June 30, 1949, ch. 288, title I, § 102(a), 63 Stat. 380; 1953 Reorg. Plan No. 3, § 2(b), eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634; 1958 Reorg. Plan No. 1, § 2, eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799; Oct. 21, 1968, Pub. L. 90–608, § 402, 82 Stat. 1194; Ex. Ord. No. 11725, § 3, eff. June 29, 1973, 38 F.R. 17175, which related to purchase, storage, refinement, rotation, and disposal of materials, was repealed by section 2(a) of Pub. L. 96–41. See section 98e of this title.

Provisions similar to those comprising this section were contained in former section 98a of this title prior to repeal of that section by Pub. L. 96–41.

DELEGATION OF FUNCTIONS

Functions of the President under this section, were delegated to the Director of the Federal Emergency Management Agency by section 1–101 of Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071, set out as a note under section 98 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 98e, 98g of this title; title 15 section 714b.

§ 98c. Materials constituting the National Defense Stockpile

(a) The stockpile consists of the following materials:

(1) Materials acquired under this subchapter and contained in the national stockpile on the day before July 30, 1979.

(2) Materials acquired under this subchapter on or after July 30, 1979.

(3) Materials in the supplemental stockpile established by section 1704(b) of title 7 (as in effect from September 21, 1959, through December 31, 1966) on the day before July 30, 1979.

(4) Materials acquired by the United States under the provisions of section 2093 of the Appendix to this title and transferred to the stockpile by the President pursuant to subsection (f) of such section.

(5) Materials transferred to the United States under section 2423 of title 22 that have been determined to be strategic and critical materials for the purposes of this subchapter and that are allocated by the President under subsection (b) of such section for stockpiling in the stockpile.

(6) Materials acquired by the Commodity Credit Corporation and transferred to the stockpile under section 714b(h) of title 15.

(7) Materials acquired by the Commodity Credit Corporation under paragraph (2) of section 1743(a) of title 7, and transferred to the stockpile under the third sentence of such section.

(8) Materials transferred to the stockpile by the President under paragraph (4) of section 1743(a) of title 7.

(9) Materials transferred to the stockpile under subsection (b) of this section.

(b) Notwithstanding any other provision of law, any material that (1) is under the control of any department or agency of the United States, (2) is determined by the head of such department or agency to be excess to its needs and responsibilities, and (3) is required for the stockpile shall be transferred to the stockpile. Any such transfer shall be made without reimbursement to such department or agency, but all costs required to effect such transfer shall be paid or reimbursed from funds appropriated to carry out this subchapter.

(June 7, 1939, ch. 190, § 4, as added July 30, 1979, Pub. L. 96–41, § 2(a), 93 Stat. 320.)

PRIOR PROVISIONS

A prior section 98c, acts June 7, 1939, ch. 190, § 4, 53 Stat. 811; July 23, 1946, ch. 590, 60 Stat. 598; 1953 Reorg. Plan No. 3, § 2(b), eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634; 1958 Reorg. Plan No. 1, § 2, eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799; Oct. 21, 1968, Pub. L. 90–608, § 402, 82 Stat. 1194; Ex. Ord. No. 11725, § 3, eff. June 29, 1973, 38 F.R. 17175; Apr. 21, 1976, Pub. L. 94–273, § 37, 90 Stat. 380, which required reports to Congress, was repealed by section 2(a) of Pub. L. 96–41. See section 98h–2 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 98b of this title.

§ 98d. Authority for stockpile operations

(a) Funds appropriated for acquisitions

Except for acquisitions made under the authority of paragraph (3) or (4) of section 98e(a) of this title, no funds may be obligated or appropriated for acquisition of any material under this subchapter unless funds for such acquisition have been authorized by law. Funds appropriated for such acquisition (and for transportation related to such acquisition) shall remain available for a period of five fiscal years, if so provided in appropriation Acts.

(b) Disposal

Except for disposals made under the authority of paragraph (4) or (5) of section 98e(a) of this title or under section 98f(a) of this title, no disposal may be made from the stockpile unless such disposal, including the quantity of the material to be disposed of, has been specifically authorized by law.

(c) Authorization of appropriations

There is authorized to be appropriated such sums as may be necessary to provide for the transportation, processing, refining, storage, security, maintenance, rotation, and disposal of materials contained in or acquired for the stockpile. Funds appropriated for such purposes shall remain available to carry out the purposes for which appropriated for a period of two fiscal years, if so provided in appropriation Acts.

(June 7, 1939, ch. 190, § 5, as added July 30, 1979, Pub. L. 96–41, § 2(a), 93 Stat. 321.)

PRIOR PROVISIONS

A prior section 98d, act June 7, 1939, ch. 190, § 5, 53 Stat. 812; July 23, 1946, ch. 590, 60 Stat. 598, which re-

lated to release of stock pile materials, was repealed by section 2(a) of Pub. L. 96-41. See section 98f of this title.

Provisions similar to those comprising this section were contained in former sections 98b and 98g of this title prior to repeal of those sections by Pub. L. 96-41.

§ 98e. Stockpile management

(a) Presidential powers

The President shall—

(1) acquire the materials determined under section 98b(a) of this title to be strategic and critical materials;

(2) provide for the proper storage, security, and maintenance of materials in the stockpile;

(3) provide for the refining or processing of any material in the stockpile when necessary to convert such material into the form most suitable for storage and subsequent disposition;

(4) provide for the rotation of any material in the stockpile when necessary to prevent deterioration of such material by replacement of such material with an equivalent quantity of substantially the same material;

(5) subject to the notification required by subsection (d)(2) of this section, provide for the timely disposal of materials in the stockpile that (A) are excess to stockpile requirements, and (B) may cause a loss to the Government if allowed to deteriorate; and

(6) dispose of materials in the stockpile the disposal of which is specifically authorized by law.

(b) Federal procurement practices

Except as provided in subsections (c) and (d) of this section, acquisition of strategic and critical materials under this subchapter shall be made in accordance with established Federal procurement practices, and, except as provided in subsections (c) and (d) of this section and in section 98f(a) of this title, disposal of materials from the stockpile shall be made by formal advertising or competitive negotiation procedures. To the maximum extent feasible—

(1) competitive procedures shall be used in the acquisition and disposal of such materials;

(2) efforts shall be made in the acquisition and disposal of such materials to avoid undue disruption of the usual markets of producers, processors, and consumers of such materials and to protect the United States against avoidable loss; and

(3) disposal of such materials shall be made for domestic consumption.

(c) Barter; use of stockpile materials as payment for expenses of acquiring, refining, processing, or rotating materials

(1) The President shall encourage the use of barter in the acquisition of strategic and critical materials for, and the disposal of materials from, the stockpile when acquisition or disposal by barter is authorized by law and is practical and in the best interest of the United States.

(2) Materials in the stockpile, the disposition of which is authorized by law, shall be available for transfer at fair market value as payment for expenses (including transportation and other incidental expenses) of acquisition of materials, or of refining, processing, or rotating materials, under this subchapter.

(3) To the extent otherwise authorized by law, property owned by the United States may be bartered for materials needed for the stockpile.

(d) Waiver; notification of proposed disposal of materials

(1) The President may waive the applicability of any provision of the first sentence of subsection (b) of this section to any acquisition of material for, or disposal of material from, the stockpile. Whenever the President waives any such provision with respect to any such acquisition or disposal, or whenever the President determines that the application of paragraph (1), (2), or (3) of such subsection to a particular acquisition or disposal is not feasible, the President shall notify the Committees on Armed Services of the Senate and House of Representatives in writing of the proposed acquisition or disposal at least thirty days before any obligation of the United States is incurred in connection with such acquisition or disposal and shall include in such notification the reasons for not complying with any provision of such subsection.

(2) Materials in the stockpile may be disposed of under subsection (a)(5) of this section only if the Committees on Armed Services of the Senate and House of Representatives are notified in writing of the proposed disposal at least thirty days before any obligation of the United States is incurred in connection with such disposal.

(e) Leasehold interests in property

The President may acquire leasehold interests in property, for periods not in excess of twenty years, for storage, security, and maintenance of materials in the stockpile.

(June 7, 1939, ch. 190, § 6, as added July 30, 1979, Pub. L. 96-41, § 2(a), 93 Stat. 321.)

PRIOR PROVISIONS

A prior section 98e, acts June 7, 1939, ch. 190, § 6, 53 Stat. 812; May 28, 1941, ch. 135, 55 Stat. 206; July 23, 1946, ch. 590, 60 Stat. 598; Ex. Ord. No. 9809, eff. Dec. 12, 1946, 11 F.R. 14281; Ex. Ord. No. 9841, eff. Apr. 23, 1947, 12 F.R. 2645; June 30, 1949, ch. 288, title I, § 105, 63 Stat. 381; 1953 Reorg. Plan No. 3, § 2(b), eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634; 1958 Reorg. Plan No. 1, § 2, eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799; Oct. 21, 1968, Pub. L. 90-608, § 402, 82 Stat. 1194; Ex. Ord. No. 11725, § 3, eff. June 29, 1973, 38 F.R. 17175, which related to transfer of surplus materials to stock piles, was repealed by section 2(a) of Pub. L. 96-41. See section 98c(b) of this title.

Provisions similar to those comprising this section were contained in former section 98b of this title prior to repeal of that section by Pub. L. 96-41.

DELEGATION OF FUNCTIONS

Functions of the President under this section, were delegated to the Administrator of General Services by section 1-102 of Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071, set out as a note under section 98 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 98d, 98h, 98h-2 of this title.

§ 98f. Special Presidential disposal authority

(a) Materials in the stockpile may be released for use, sale, or other disposition—

(1) on the order of the President, at any time the President determines the release of such materials is required for purposes of the national defense; and

(2) in time of war declared by the Congress or during a national emergency, on the order of any officer or employee of the United States designated by the President to have authority to issue disposal orders under this subsection, if such officer or employee determines that the release of such materials is required for purposes of the national defense.

(b) Any order issued under subsection (a) of this section shall be promptly reported by the President, or by the officer or employee issuing such order, in writing, to the Committees on Armed Services of the Senate and House of Representatives.

(June 7, 1939, ch. 190, § 7, as added July 30, 1979, Pub. L. 96–41, § 2(a), 93 Stat. 322.)

PRIOR PROVISIONS

A prior section 98f, acts June 7, 1939, ch. 190, § 7, 53 Stat. 812; July 23, 1946, ch. 590, 60 Stat. 599, which related to investigations of domestic ores, minerals, and agriculture resources for purposes of development, etc., was repealed by section 2(a) of Pub. L. 96–41.

Provisions similar to those comprising this section were contained in former section 98d of this title prior to repeal of that section by Pub. L. 96–41.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 98d, 98e, 98h of this title.

§ 98g. Materials development and research

(a)(1) The President shall make scientific, technologic, and economic investigations concerning the development, mining, preparation, treatment, and utilization of ores and other mineral substances that (A) are found in the United States, or in its territories or possessions, (B) are essential to the national defense, industrial, and essential civilian needs of the United States, and (C) are found in known domestic sources in inadequate quantities or grades.

(2) Such investigations shall be carried out in order to—

(A) determine and develop new domestic sources of supply of such ores and mineral substances;

(B) devise new methods for the treatment and utilization of lower grade reserves of such ores and mineral substances; and

(C) develop substitutes for such essential ores and mineral products.

(3) Investigations under paragraph (1) may be carried out on public lands and, with the consent of the owner, on privately owned lands for the purpose of exploring and determining the extent and quality of deposits of such minerals, the most suitable methods of mining and beneficiating such minerals, and the cost at which the minerals or metals may be produced.

(b) The President shall make scientific, technologic, and economic investigations of the feasibility of developing domestic sources of supplies of any agricultural material or for using agricultural commodities for the manufacture of any material determined pursuant to section 98b(a) of this title to be a strategic and critical material or substitutes therefor.

(June 7, 1939, ch. 190, § 8, as added July 30, 1979, Pub. L. 96–41, § 2(a), 93 Stat. 322.)

PRIOR PROVISIONS

A prior section 98g, acts June 7, 1939, ch. 190, § 8, as added July 23, 1946, ch. 590, 60 Stat. 600, and amended 1953 Reorg. Plan No. 3, § 2(b), eff. June 12, 1953, 18 F.R. 3375, 67 Stat. 634; 1958 Reorg. Plan No. 1, § 2, eff. July 1, 1958, 23 F.R. 4991, 72 Stat. 1799; Oct. 21, 1968, Pub. L. 90-608, § 402, 82 Stat. 1194; Ex. Ord. No. 11725, § 3, eff. June 29, 1973, 38 F.R. 17175, which authorized appropriations for procurement, transportation, maintenance, rotation, storage, and refining or processing of materials acquired under this subchapter, was repealed by section 2(a) of Pub. L. 96–41. See section 98d(c) of this title.

Provisions similar to those comprising this section were contained in former section 98f of this title prior to repeal of that section by Pub. L. 96–41.

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (a) of this section were delegated to the Secretary of the Interior and functions of the President under subsec. (b) of this section were delegated to the Secretary of Agriculture by section 1-103 of Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071, set out as a note under section 98 of this title.

§ 98h. National Defense Stockpile Transaction Fund

(a) Establishment

There is established in the Treasury of the United States a separate fund to be known as the National Defense Stockpile Transaction Fund (hereinafter in this section referred to as the "fund").

(b) Fund operations

(1) All moneys received from the sale of materials in the stockpile under paragraphs (5) and (6) of section 98e(a) of this title shall be covered into the fund. Such moneys shall remain in the fund until appropriated or until the end of the third fiscal year following the fiscal year in which they are received. Any such moneys remaining in the fund after the end of such third fiscal year that have not been appropriated shall be transferred to miscellaneous receipts of the Treasury. Any of such moneys that are appropriated shall be disbursed from the fund in the order in which they were covered into the fund.

(2) Moneys covered into the fund under paragraph (1) shall be available, when appropriated therefor, only for the acquisition of strategic and critical materials under section 98e(a)(1) of this title (and for transportation related to such acquisition).

(3) If so provided in appropriation Acts, moneys in the fund, when appropriated, shall remain available for a period of five fiscal years.

(c) Moneys received from sale of materials being rotated or disposed of

All moneys received from the sale of materials being rotated under the provisions of sec-

tion 98e(a)(4) of this title or disposed of under section 98f(a) of this title shall be covered into the fund and shall be available only for the acquisition of replacement materials.

(June 7, 1939, ch. 190, § 9, as added July 30, 1979, Pub. L. 96-41, § 2(a), 93 Stat. 323.)

PRIOR PROVISIONS

A prior section 98h, act June 7, 1939, ch. 190, § 9, as added July 23, 1946, ch. 590, 60 Stat. 600, which related to disposition of receipts, was repealed by section 2(a) Pub. L. 96-41. See section 98h(b)(1) of this title.

§ 98h-1. Advisory committees

(a) The President may appoint advisory committees composed of individuals with expertise relating to materials in the stockpile or with expertise in stockpile management to advise the President with respect to the acquisition, transportation, processing, refining, storage, security, maintenance, rotation, and disposal of such materials under this subchapter.

(b) Each member of an advisory committee established under subsection (a) of this section while serving on the business of the advisory committee away from such member's home or regular place of business shall be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons intermittently employed in the Government service.

(June 7, 1939, ch. 190, § 10, as added July 30, 1979, Pub. L. 96-41, § 2(a), 93 Stat. 323.)

PRIOR PROVISIONS

A prior section 10 of act June 7, 1939, ch. 190, § 10, was renumbered section 13 and is classified to section 98h-4 of this title.

Provisions similar to those comprising this section were contained in former section 98a(b) of this title prior to repeal of that section by Pub. L. 96-41.

DELEGATION OF FUNCTIONS

Functions of the President under this section were delegated to the Administrator of General Services by section 1-104 of Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071, set out as a note under section 98 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 98h-2. Reports to Congress

The President shall submit to the Congress every six months a written report detailing operations under this subchapter. Each such report shall include—

(1) information with respect to foreign and domestic purchases of materials during the preceding six-month period;

(2) information with respect to the acquisition and disposal of materials under this subchapter by barter, as provided for in section 98e(c) of this title, during such period;

(3) a statement and explanation of the financial status of the National Defense Stockpile Transaction Fund and the anticipated appropriations to be made from the fund during the next fiscal year; and

(4) such other pertinent information on the administration of this subchapter as will enable the Congress to evaluate the effectiveness of the program provided for under this subchapter and to determine the need for additional legislation.

(June 7, 1939, ch. 190, § 11, as added July 30, 1979, Pub. L. 96-41, § 2(a), 93 Stat. 324.)

PRIOR PROVISIONS

A prior section 11 of act June 7, 1939, ch. 190, formerly § 10, as added July 23, 1946, ch. 590, 60 Stat. 596, and renumbered Pub. L. 92-156, title V, § 503(1), Nov. 17, 1971, 85 Stat. 427, which was set out as a Short Title note under section 98 of this title, was repealed by section 2(b)(2) of Pub. L. 96-41.

Provisions similar to those comprising this section were contained in former section 98c of this title prior to repeal of that section by Pub. L. 96-41.

DELEGATION OF FUNCTIONS

Functions of the President under this section were delegated to the Director of the Federal Emergency Management Agency by section 1-105 of Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071, set out as a note under section 98 of this title.

§ 98h-3. Definitions

For the purposes of this subchapter:

(1) The term "strategic and critical materials" means materials that (A) would be needed to supply the military, industrial, and essential civilian needs of the United States during a national emergency, and (B) are not found or produced in the United States in sufficient quantities to meet such need.

(2) The term "national emergency" means a general declaration of emergency with respect to the national defense made by the President or by the Congress.

(June 7, 1939, ch. 190, § 12, as added July 30, 1979, Pub. L. 96-41, § 2(a), 93 Stat. 324.)

§ 98h-4. Importation of strategic and critical materials

Notwithstanding any other provision of law, on and after January 1, 1972, the President may not prohibit or regulate the importation into the United States of any material determined to be strategic and critical pursuant to the provisions of this subchapter, if such material is the product of any foreign country or area not listed as a Communist-dominated country or area in general headnote 3(d) of the Tariff Schedules of the United States (19 U.S.C. 1202), for so long as the importation into the United States of material of that kind which is the product of such Communist-dominated countries or areas is not prohibited by any provision of law.

(June 7, 1939, ch. 190, § 13, formerly § 10, as added Nov. 17, 1971, Pub. L. 92-156, title V, § 503(2), 85 Stat. 427, and renumbered July 30, 1979, Pub. L. 96-41, § 2(b)(1), 93 Stat. 324.)

REFERENCES IN TEXT

The Tariff Schedules of the United States, referred to in text, are no longer set out in the Code. See Publication of Tariff Schedules note set out under section 1202 of Title 19, Customs Duties.

CODIFICATION

Section was formerly classified to section 98h-1 of this title.

§ 100a. Scrap-processing facilities; acquisition, construction, or operation

REPEALED

Dec. 21, 1979, Pub. L. 96-154, title VII, § 713, 93 Stat. 1154.
Oct. 13, 1978, Pub. L. 95-457, title VIII, § 813, 92 Stat. 1246.
Sept. 21, 1977, Pub. L. 95-111, title VIII, § 812, 91 Stat. 901.

CHAPTER 10—HELIUM GAS

§§ 167d, 167e

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under those sections were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

CHAPTER 12—VESSELS IN TERRITORIAL WATERS OF UNITED STATES

§ 191. Regulation of anchorage and movement of vessels during national emergency

Whenever the President by proclamation or Executive order declares a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, the Secretary of the Treasury may make, subject to the approval of the President, rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in the territorial waters of the United States, may inspect such vessel at any time, place guards thereon, and, if necessary in his opinion in order to secure such vessels from damage or injury, or to prevent damage or injury to any harbor or waters of the United States, or to secure the observance of the rights and obligations of the United States, may take, by and with the consent of the President, for such purposes, full possession and control of such vessel and remove therefrom the officers and crew thereof and all other persons not specially authorized by him to go or remain on board thereof.

Whenever the President finds that the security of the United States is endangered by reason of actual or threatened war, or invasion, or insurrection, or subversive activity, or of disturbances or threatened disturbances of the international relations of the United States, the President is authorized to institute such measures and issue such rules and regulations—

[See main edition for text of (a)]

(b) to safeguard against destruction, loss, or injury from sabotage or other subversive acts, accidents, or other causes of similar nature, vessels, harbors, ports, and waterfront facilities in the United States and all territory and water, continental or insular, subject to the jurisdiction of the United States.

Any appropriation available to any of the Executive Departments shall be available to carry out the provisions of this title.

(As amended Sept. 27, 1979, Pub. L. 96-70, title III, § 3302(a), 93 Stat. 498.)

AMENDMENTS

1979—Pub. L. 96-70 struck out second paragraph, providing that within the territory and waters of the Canal Zone the Governor of the Canal Zone, with the approval of the President, shall exercise all the powers conferred by this section on the Secretary of the Treasury, and in cl. (b) of the third paragraph struck out "the Canal Zone," following "facilities in the United States,".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 191a of this title; title 18 section 2277; title 42 section 267.

§ 191b. Repealed. Pub. L. 96-70, title III, § 3303(a)(5), Sept. 27, 1979, 93 Stat. 499

Section, acts Nov. 15, 1941, ch. 471, § 4, 55 Stat. 763; Sept. 26, 1950, ch. 1049, § 2(b), 64 Stat. 1038; Oct. 18, 1962, Pub. L. 87-845, § 12, 76A Stat. 699, provided that this section, section 191a of this title, and section 91 of title 14 not affect the authority of the Governor of the Canal Zone conferred by section 191 of this title or section 34 of Title 2, Canal Zone Code.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

§ 195. "United States" defined

The term "United States" as used in this Act includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

(As amended Sept. 27, 1979, Pub. L. 96-70, title III, § 3302(b), 93 Stat. 498.)

AMENDMENTS

1979—Pub. L. 96-70 struck out "the Canal Zone and" following "this Act includes".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

§ 196. Emergency foreign vessel acquisition; purchase or requisition of vessels lying idle in United States waters

During any period in which vessels may be requisitioned under section 1242 of title 46, the

President is authorized and empowered through the Secretary of Commerce to purchase, or to requisition, or for any part of such period to charter or requisition the use of, or to take over the title to or possession of, for such use or disposition as he shall direct, any merchant vessel not owned by citizens of the United States which is lying idle in waters within the jurisdiction of the United States and which the President finds to be necessary to the national defense. Just compensation shall be determined and made to the owner or owners of any such vessel in accordance with the applicable provisions of section 1242 of title 46. Such compensation hereunder, or advances on account thereof, shall be deposited with the Treasurer of the United States in a separate deposit fund. Payments for such compensation and also for payment of any valid claim upon such vessel in accord with the provisions of the second paragraph of subsection (d) of section 1242 of title 46, shall be made from such fund upon the certificate of the Secretary of Commerce.

(As amended Sept. 27, 1979, Pub. L. 96-70, title III, § 3302(c), 93 Stat. 498.)

AMENDMENTS

1979—Pub. L. 96-70 struck out ", including the Canal Zone," following "jurisdiction of the United States".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-70 effective Oct. 1, 1979, see section 3304 of Pub. L. 96-70, set out as an Effective Date note under section 3601 of Title 22, Foreign Relations and Intercourse.

CHAPTER 15—NATIONAL SECURITY

§ 401. Congressional declaration of purpose

FOREIGN INTELLIGENCE ELECTRONIC SURVEILLANCE

For provisions relating to the exercise of certain authority respecting foreign intelligence electronic surveillance, see Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, set out as a note under section 1802 of this title.

MODIFICATION OF EXECUTIVE ORDER NO. 10865

Ex. Ord. No. 10865, Feb. 23, 1960, 25 F.R. 1583, as amended, set out as a note under this section, when referring to functions of the Atomic Energy Commission is modified to provide that all such functions shall be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, see section 4(a)(1) of Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of Title 42, The Public Health and Welfare.

EXECUTIVE ORDER NO. 11652

Ex. Ord. No. 11652, Mar. 8, 1972, 37 F.R. 5209, as amended by Ex. Ord. No. 11714, Apr. 24, 1973, 38 F.R. 10245; Ex. Ord. No. 11862, June 11, 1975, 40 F.R. 25197; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under this section, which related to the classification and declassification of national security information and material, was revoked by Ex. Ord. No. 12065, June 28, 1978, 43 F.R. 28949, set out as a note below.

EXECUTIVE ORDER NO. 11905

Ex. Ord. No. 11905, Feb. 18, 1976, 41 F.R. 7703, as amended by Ex. Ord. No. 11985, May 13, 1977, 42 F.R. 25487; Ex. Ord. No. 11994, June 1, 1977, 42 F.R. 28869, set out as a note under this section, which related to United States foreign intelligence activities, was superseded by Ex. Ord. No. 12036, Jan. 24, 1978, 43 F.R. 3674, set out as a note below.

EX. ORD. NO. 12036. UNITED STATES INTELLIGENCE ACTIVITIES

Ex. Ord. No. 12036, Jan. 24, 1978, 43 F.R. 3674, as amended by Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America including the National Security Act of 1947, as amended [see Short Title note set out under this section], and as President of the United States of America, in order to provide for the organization and control of United States foreign intelligence activities, it is hereby ordered as follows:

TABLE OF CONTENTS

SECTION 1	DIRECTION, DUTIES AND RESPONSIBILITIES WITH RESPECT TO THE NATIONAL INTELLIGENCE EFFORT
1-1	National Security Council
1-2	NSC Policy Review Committee
1-3	NSC Special Coordination Committee
1-4	National Foreign Intelligence Board
1-5	National Intelligence Tasking Center
1-6	The Director of Central Intelligence
1-7	Senior Officials of the Intelligence Community
1-8	The Central Intelligence Agency
1-9	The Department of State
1-10	The Department of the Treasury
1-11	The Department of Defense
1-12	Intelligence Components Utilized by the Secretary of Defense
1-13	The Department of Energy
1-14	The Federal Bureau of Investigation
1-15	The Drug Enforcement Administration
SECTION 2	RESTRICTIONS ON INTELLIGENCE ACTIVITIES
2-1	Adherence to Law
2-2	Restrictions on Certain Collection Techniques
2-201	General Provisions
2-202	Electronic Surveillance
2-203	Television Cameras and Other Monitoring
2-204	Physical Searches
2-205	Mail Surveillance
2-206	Physical Surveillance
2-207	Undisclosed Participation in Domestic Organizations
2-208	Collection of Nonpublicly Available Information
2-3	Additional Restrictions and Limitations
2-301	Tax Information
2-302	Restrictions on Experimentation
2-303	Restrictions on Contracting
2-304	Restrictions on Personnel Assigned to Other Agencies
2-305	Prohibition on Assassination
2-306	Restrictions on Special Activities
2-307	Restrictions on Indirect Participation in Prohibited Activities
2-308	Restrictions on Assistance to Law Enforcement Authorities
2-309	Permissible Assistance to Law Enforcement Authorities
2-310	Permissible Dissemination and Storage of Information
SECTION 3	OVERSIGHT OF INTELLIGENCE ORGANIZATIONS
3-1	Intelligence Oversight Board
3-2	Inspectors General and General Counsel
3-3	Attorney General
3-4	Congressional Intelligence Committees
SECTION 4	GENERAL PROVISIONS
4-1	Implementation
4-2	Definitions

SECTION 1. DIRECTION, DUTIES AND RESPONSIBILITIES WITH RESPECT TO THE NATIONAL INTELLIGENCE EFFORT*

1-1. NATIONAL SECURITY COUNCIL

1-101. *Purpose.* The National Security Council (NSC) was established by the National Security Act of 1947 [see Short Title note set out under this section]

* Certain technical terms are defined in section 4-2.

to advise the President with respect to the integration of domestic, foreign, and military policies relating to the national security. The NSC shall act as the highest Executive Branch entity that provides review of, guidance for, and direction to the conduct of all national foreign intelligence and counterintelligence activities.

1-102. *Committees.* The NSC Policy Review Committee and Special Coordination Committee, in accordance with procedures established by the Assistant to the President for National Security Affairs, shall assist in carrying out the NSC's responsibilities in the foreign intelligence field.

1-2. NSC Policy Review Committee

1-201. *Membership.* The NSC Policy Review Committee (PRC), when carrying out responsibilities assigned in this Order, shall be chaired by the Director of Central Intelligence and composed of the Vice President, the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the Assistant to the President for National Security Affairs, and the Chairman of the Joint Chiefs of Staff, or their designees, and other senior officials, as appropriate.

1-202. *Duties.* The PRC shall:

(a) Establish requirements and priorities for national foreign intelligence;

(b) Review the National Foreign Intelligence Program and budget proposals and report to the President as to whether the resource allocations for intelligence capabilities are responsive to the intelligence requirements of the members of the NSC.

(c) Conduct periodic reviews of national foreign intelligence products, evaluate the quality of the intelligence product, develop policy guidance to ensure quality intelligence and to meet changing intelligence requirements; and

(d) Submit an annual report on its activities to the NSC.

1-203. *Appeals.* Recommendations of the PRC on intelligence matters may be appealed to the President or the NSC by any member of PRC.

1-3. NSC Special Coordination Committee

1-301. *Membership.* The NSC Special Coordination Committee (SCC) is chaired by the Assistant to the President for National Security Affairs and its membership includes the statutory members of the NSC and other senior officials, as appropriate.

1-302. *Special Activities.* The SCC shall consider and submit to the President a policy recommendation, including all dissents, on each special activity. When meeting for this purpose, the members of the SCC shall include the Secretary of State, the Secretary of Defense, the Attorney General, the Director of the Office of Management and Budget, the Assistant to the President for National Security Affairs, the Chairman of the Joint Chiefs of Staff, and the Director of Central Intelligence.

1-303. *Sensitive Foreign Intelligence Collection Operations.* Under standards established by the President, proposals for sensitive foreign intelligence collection operations shall be reported to the Chairman by the Director of Central Intelligence for appropriate review and approval. When meeting for the purpose of reviewing proposals for sensitive foreign intelligence collection operations, the members of the SCC shall include the Secretary of State, the Secretary of Defense, the Attorney General, the Assistant to the President for National Security Affairs, the Director of Central Intelligence, and such other members designated by the Chairman to ensure proper consideration of these operations.

1-304. *Counterintelligence.* The SCC shall develop policy with respect to the conduct of counterintelligence activities. When meeting for this purpose the members of the SCC shall include the Secretary of State, the Secretary of Defense, the Attorney General, the Director of the Office of Management and Budget, the Assistant to the President for National Security Affairs, the Chairman of the Joint Chiefs of Staff, the Director of Central Intelligence, and the Director of the FBI. The SCC's counterintelligence functions shall include:

(a) Developing standards and doctrine for the counterintelligence activities of the United States;

(b) Resolving interagency differences concerning implementation of counterintelligence policy;

(c) Developing and monitoring guidelines consistent with this Order for the maintenance of central records of counterintelligence information;

(d) Submitting to the President an overall annual assessment of the relative threat to United States interests from intelligence and security services of foreign powers and from international terrorist activities, including an assessment of the effectiveness of the United States counterintelligence activities; and

(e) Approving counterintelligence activities which, under such standards as may be established by the President, require SCC approval.

1-305. *Required Membership.* The SCC shall discharge the responsibilities assigned by sections 1-302 through 1-304 only after consideration in a meeting at which all designated members are present or, in unusual circumstances when any such member is unavailable, when a designated representative of the member attends.

1-306. *Additional Duties.* The SCC shall also:

(a) Conduct an annual review of ongoing special activities and sensitive national foreign intelligence collection operations and report thereon to the NSC; and

(b) Carry out such other coordination and review activities as the President may direct.

1-307. *Appeals.* Any member of the SCC may appeal any decision to the President or the NSC.

1-4. National Foreign Intelligence Board

1-401. *Establishment and Duties.* There is established a National Foreign Intelligence Board (NFIB) to advise the Director of Central Intelligence concerning:

(a) Production, review, and coordination of national foreign intelligence;

(b) The National Foreign Intelligence Program budget;

(c) Interagency exchanges of foreign intelligence information;

(d) Arrangements with foreign governments on intelligence matters;

(e) The protection of intelligence sources and methods;

(f) Activities of common concern; and

(g) Other matters referred to it by the Director of Central Intelligence.

1-402. *Membership.* The NFIB shall be chaired by the Director of Central Intelligence and shall include other appropriate officers of the CIA, the Office of the Director of Central Intelligence, the Department of State, the Department of Defense, the Department of Justice, the Department of the Treasury, the Department of Energy, the Defense Intelligence Agency, the offices within the Department of Defense for reconnaissance programs, the National Security Agency and the FBI. A representative of the Assistant to the President for National Security Affairs may attend meetings of the NFIB as an observer.

1-403. *Restricted Membership and Observers.* When the NFIB meets for the purpose of section 1-401(a), it shall be composed solely of the senior intelligence officers of the designated agencies. The senior intelligence officers of the Army, Navy, and Air Force may attend all meetings of the NFIB as observers.

1-5. National Intelligence Tasking Center

1-501. *Establishment.* There is established a National Intelligence Tasking Center (NITC) under the direction, control and management of the Director of Central Intelligence for coordinating and tasking national

foreign intelligence collection activities. The NITC shall be staffed jointly by civilian and military personnel including designated representatives of the chiefs of each of the Department of Defense intelligence organizations engaged in national foreign intelligence activities. Other agencies within the Intelligence Community may also designate representatives.

1-502. *Responsibilities.* The NITC shall be the central mechanism by which the Director of Central Intelligence:

(a) Translates national foreign intelligence requirements and priorities developed by the PRC into specific collection objectives and targets for the Intelligence Community;

(b) Assigns targets and objectives to national foreign intelligence collection organizations and systems;

(c) Ensures the timely dissemination and exploitation of data for national foreign intelligence purposes gathered by national foreign intelligence collection means, and ensures the resulting intelligence flow is routed immediately to relevant components and commands;

(d) Provides advisory tasking concerning collection of national foreign intelligence to departments and agencies having information collection capabilities or intelligence assets that are not a part of the National Foreign Intelligence Program. Particular emphasis shall be placed on increasing the contribution of departments or agencies to the collection of information through overt means.

1-503. *Resolution of Conflicts.* The NITC shall have the authority to resolve conflicts of priority. Any PRC member may appeal such a resolution to the PRC; pending the PRC's decision, the tasking remains in effect.

1-504. *Transfer of Authority.* All responsibilities and authorities of the Director of Central Intelligence concerning the NITC shall be transferred to the Secretary of Defense upon the express direction of the President. To maintain readiness for such transfer, the Secretary of Defense shall, with advance agreement of the Director of Central Intelligence, assume temporarily during regular practice exercises all responsibilities and authorities of the Director of Central Intelligence concerning the NITC.

1-6. The Director of Central Intelligence

1-601. *Duties.* The Director of Central Intelligence shall be responsible directly to the NSC and, in addition to the duties specified elsewhere in this Order, shall:

(a) Act as the primary adviser to the President and the NSC on national foreign intelligence and provide the President and other officials in the Executive Branch with national foreign intelligence;

(b) Be the head of the CIA and of such staff elements as may be required for discharge of the Director's Intelligence Community responsibilities;

(c) Act, in appropriate consultation with the departments and agencies, as the Intelligence Community's principal spokesperson to the Congress, the news media and the public, and facilitate the use of national foreign intelligence products by the Congress in a secure manner;

(d) Develop, consistent with the requirements and priorities established by the PRC, such objectives and guidance for the Intelligence Community as will enhance capabilities for responding to expected future needs for national foreign intelligence;

(e) Promote the development and maintenance of services of common concern by designated foreign intelligence organizations on behalf of the Intelligence Community;

(f) Ensure implementation of special activities;

(g) Formulate policies concerning intelligence arrangements with foreign governments, and coordinate intelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments;

(h) Conduct a program to protect against overclassification of foreign intelligence information;

(i) Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information and products;

(j) Participate in the development of procedures required to be approved by the Attorney General governing the conduct of intelligence activities;

(k) Establish uniform criteria for the determination of relative priorities for the transmission of critical national foreign intelligence, and advise the Secretary of Defense concerning the communications requirements of the Intelligence Community for the transmission of such intelligence;

(*l*) Provide appropriate intelligence to departments and agencies not within the Intelligence Community; and

(m) Establish appropriate committees or other advisory groups to assist in the execution of the foregoing responsibilities.

1-602. *National Foreign Intelligence Program Budget.* The Director of Central Intelligence shall, to the extent consistent with applicable law, have full and exclusive authority for approval of the National Foreign Intelligence Program budget submitted to the President. Pursuant to this authority:

(a) The Director of Central Intelligence shall provide guidance for program and budget development to program managers and heads of component activities and to department and agency heads;

(b) The heads of departments and agencies involved in the National Foreign Intelligence Program shall ensure timely development and submission to the Director of Central Intelligence of proposed national programs and budgets in the format designated by the Director of Central Intelligence, by the program managers and heads of component activities, and shall also ensure that the Director of Central Intelligence is provided, in a timely and responsive manner, all information necessary to perform the Director's program and budget responsibilities;

(c) The Director of Central Intelligence shall review and evaluate the national program and budget submissions and, with the advice of the NFIB and the departments and agencies concerned, develop the consolidated National Foreign Intelligence Program budget and present it to the President through the Office of Management and Budget;

(d) The Director of Central Intelligence shall present and justify the National Foreign Intelligence Program budget to the Congress;

(e) The heads of the departments and agencies shall, in consultation with the Director of Central Intelligence, establish rates of obligation for appropriated funds;

(f) The Director of Central Intelligence shall have full and exclusive authority for reprogramming National Foreign Intelligence Program funds, in accord with guidelines established by the Office of Management and Budget, but shall do so only after consultation with the head of the department affected and appropriate consultation with the Congress;

(g) The departments and agencies may appeal to the President decisions by the Director of Central Intelligence on budget or reprogramming matters of the National Foreign Intelligence Program.

(h) The Director of Central Intelligence shall monitor National Foreign Intelligence Program implementation and may conduct program and performance audits and evaluations.

1-603. *Responsibility For National Foreign Intelligence.* The Director of Central Intelligence shall have full responsibility for production and dissemination of national foreign intelligence and have authority to levy analytic tasks on departmental intelligence production organizations, in consultation with those organizations. In doing so, the Director of Central Intelligence shall ensure that diverse points of view are considered fully and that differences of judgment within the Intelligence Community are brought to the attention of national policymakers.

1-604. *Protection of Sources, Methods and Procedures.* The Director of Central Intelligence shall ensure that programs are developed which protect intelligence sources, methods and analytical procedures, provided that this responsibility shall be limited within the United States to:

(a) Using lawful means to protect against disclosure by present or former employees of the CIA or the Office of the Director of Central Intelligence, or by persons or organizations presently or formerly under contract with such entities; and

(b) Providing policy, guidance and technical assistance to departments and agencies regarding protection of intelligence information, including information that may reveal intelligence sources and methods.

1-605. *Responsibility of Executive Branch Agencies.* The heads of all Executive Branch departments and agencies shall, in accordance with law and relevant Attorney General procedures, give the Director of Central Intelligence access to all information relevant to the national intelligence needs of the United States and shall give due consideration to requests from the Director of Central Intelligence for appropriate support for CIA activities.

1-606. *Access to CIA Intelligence.* The Director of Central Intelligence, shall, in accordance with law and relevant Attorney General procedures, give the heads of the departments and agencies access to all intelligence, developed by the CIA or the staff elements of the Office of the Director of Central Intelligence, relevant to the national intelligence needs of the departments and agencies.

1-7. Senior Officials of the Intelligence Community

The senior officials of each of the agencies within the Intelligence Community shall:

1-701. Ensure that all activities of their agencies are carried out in accordance with applicable law;

1-702. Make use of the capabilities of other agencies within the Intelligence Community in order to achieve efficiency and mutual assistance;

1-703. Contribute in their areas of responsibility to the national foreign intelligence products;

1-704. Establish internal policies and guidelines governing employee conduct and ensure that such are made known to each employee;

1-705. Provide for strong, independent, internal means to identify, inspect, and report on unlawful or improper activity;

1-706. Report to the Attorney General evidence of possible violations of federal criminal law by an employee of their department or agency, and report to the Attorney General evidence of possible violations by any other person of those federal criminal laws specified in guidelines adopted by the Attorney General;

1-707. In any case involving serious or continuing breaches of security, recommend to the Attorney General that the case be referred to the FBI for further investigation;

1-708. Furnish the Director of Central Intelligence, the PRC and the SCC, in accordance with applicable law and Attorney General procedures, the information required for the performance of their respective duties;

1-709. Report to the Intelligence Oversight Board, and keep the Director of Central Intelligence appropriately informed, concerning any intelligence activities of their organizations which raise questions of legality or propriety;

1-710. Protect intelligence and intelligence sources and methods consistent with guidance from the Director of Central Intelligence and the NSC;

1-711. Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence;

1-712. Execute programs to protect against overclassification of foreign intelligence;

1-713. Instruct their employees to cooperate fully with the Intelligence Oversight Board; and

1-714. Ensure that the Inspectors General and General Counsel of their agencies have access to any information necessary to perform their duties assigned by this Order.

1-8. The Central Intelligence Agency

All duties and responsibilities of the CIA shall be related to the intelligence functions set out below. As authorized by the National Security Act of 1947, as amended [see Short Title note set out under this section], the CIA Act of 1949, as amended [see Short Title of 1949 Amendment note set out under this section], and other laws, regulations and directives, the CIA, under the direction of the NSC, shall:

1-801. Collect foreign intelligence, including information not otherwise obtainable, and develop, conduct, or provide support for technical and other programs which collect national foreign intelligence. The collection of information within the United States shall be coordinated with the FBI as required by procedures agreed upon by the Director of Central Intelligence and the Attorney General;

1-802. Produce and disseminate foreign intelligence relating to the national security, including foreign political, economic, scientific, technical, military, geographic and sociological intelligence to meet the needs of the President, the NSC, and other elements of the United States Government;

1-803. Collect, produce and disseminate intelligence on foreign aspects of narcotics production and trafficking;

1-804. Conduct counterintelligence activities outside the United States and coordinate counterintelligence activities conducted outside the United States by other agencies within the Intelligence Community;

1-805. Without assuming or performing any internal security functions, conduct counterintelligence activities within the United States, but only in coordination with the FBI and subject to the approval of the Attorney General;

1-806. Produce and disseminate counterintelligence studies and reports;

1-807. Coordinate the collection outside the United States of intelligence information not otherwise obtainable;

1-808. Conduct special activities approved by the President and carry out such activities consistent with applicable law;

1-809. Conduct services of common concern for the Intelligence Community as directed by the NSC;

1-810. Carry out or contract for research, development and procurement of technical systems and devices relating to authorized functions;

1-811. Protect the security of its installations, activities, information and personnel by appropriate means, including such investigations of applicants, employees, contractors, and other persons with similar associations with the CIA as are necessary;

1-812. Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections 1-801 through 1-811 above, including procurement and essential cover and proprietary arrangements.

1-813. Provide legal and legislative services and other administrative support to the Office of the Director of Central Intelligence.

1-9. The Department of State

The Secretary of State shall:

1-901. Overtly collect foreign political, sociological, economic, scientific, technical, political-military and associated biographic information;

1-902. Produce and disseminate foreign intelligence relating to United States foreign policy as required for the execution of the Secretary's responsibilities;

1-903. Disseminate, as appropriate, reports received from United States diplomatic and consular posts abroad;

1-904. Coordinate with the Director of Central Intelligence to ensure that national foreign intelligence activities are useful to and consistent with United States foreign policy;

1-905. Transmit reporting requirements of the Intelligence Community to the Chiefs of United States Missions abroad; and

1-906. Support Chiefs of Mission in discharging their statutory responsibilities for direction and coordination of mission activities.

1-10. The Department of the Treasury

The Secretary of the Treasury shall:

1-1001. Overtly collect foreign financial and monetary information;

1-1002. Participate with the Department of State in the overt collection of general foreign economic information;

1-1003. Produce and disseminate foreign intelligence relating to United States economic policy as required for the execution of the Secretary's responsibilities; and

1-1004. Conduct, through the United States Secret Service, activities to determine the existence and capability of surveillance equipment being used against the President of the United States, the Executive Office of the President, and, as authorized by the Secretary of the Treasury or the President, other Secret Service protectees and United States officials. No information shall be acquired intentionally through such activities except to protect against such surveillance, and those activities shall be conducted pursuant to procedures agreed upon by the Secretary of the Treasury and the Attorney General.

1-11. The Department of Defense

The Secretary of Defense shall:

1-1101. Collect national foreign intelligence and be responsive to collection tasking by the NITC;

1-1102. Collect, produce and disseminate foreign military and military-related intelligence information, including scientific, technical, political, geographic and economic information as required for execution of the Secretary's responsibilities;

1-1103. Conduct programs and missions necessary to fulfill national and tactical foreign intelligence requirements;

1-1104. Conduct counterintelligence activities in support of Department of Defense components outside the United States in coordination with the CIA, and within the United States in coordination with the FBI pursuant to procedures agreed upon by the Secretary of Defense and the Attorney General, and produce and disseminate counterintelligence studies and reports;

1-1105. Direct, operate, control and provide fiscal management for the National Security Agency and for defense and military intelligence and national reconnaissance entities;

1-1106. Conduct, as the executive agent of the United States Government, signals intelligence and communications security activities, except as otherwise directed by the NSC;

1-1107. Provide for the timely transmission of critical intelligence, as defined by the Director of Central Intelligence, within the United States Government;

1-1108. Review budget data and information on Department of Defense programs within the National Foreign Intelligence Program and review budgets submitted by program managers to the Director of Central Intelligence to ensure the appropriate relationship of the National Foreign Intelligence Program elements to the other elements of the Defense program;

1-1109. Monitor, evaluate and conduct performance audits of Department of Defense intelligence programs;

1-1110. Carry out or contract for research, development and procurement of technical systems and devices relating to authorized intelligence functions;

1-1111. Together with the Director of Central Intelligence, ensure that there is no unnecessary overlap between national foreign intelligence programs and Department of Defense intelligence programs and provide the Director of Central Intelligence all information necessary for this purpose;

1-1112. Protect the security of Department of Defense installations, activities, information and personnel by appropriate means including such investigations of applicants, employees, contractors and other persons with similar associations with the Department of Defense as are necessary; and

1-1113. Conduct such administrative and technical support activities within and outside the United States as are necessary to perform the functions described in sections 1-1101 through 1-1112 above.

1-12. Intelligence Components Utilized by the Secretary of Defense

In carrying out the responsibilities assigned in sections 1-1101 through 1-1113, the Secretary of Defense is authorized to utilize the following:

1-1201. *Defense Intelligence Agency*, whose responsibilities shall include:

(a) Production or, through tasking and coordination, provision of military and military-related intelligence for the Secretary of Defense, the Joint Chiefs of Staff, other Defense components, and, as appropriate, non-Defense agencies;

(b) Provision of military intelligence for national foreign intelligence products;

(c) Coordination of all Department of Defense intelligence collection requirements for departmental needs;

(d) Management of the Defense Attaché system; and

(e) Provision of foreign intelligence and counterintelligence staff support as directed by the Joint Chiefs of Staff.

1-1202. *National Security Agency* (NSA), whose responsibilities shall include:

(a) Establishment and operation of an effective unified organization for signals intelligence activities, except for the delegation of operational control over certain operations that are conducted through other elements of the Intelligence Community. No other department or agency may engage in signals intelligence activities except pursuant to a delegation by the Secretary of Defense;

(b) Control of signals intelligence collection and processing activities, including assignment of resources to an appropriate agent for such periods and tasks as required for the direct support of military commanders;

(c) Collection of signals intelligence information for national foreign intelligence purposes in accordance with tasking by the NITC;

(d) Processing of signals intelligence data for national foreign intelligence purposes consistent with standards for timeliness established by the Director of Central Intelligence;

(e) Dissemination of signals intelligence information for national foreign intelligence purposes to authorized elements of the Government, including the military services, in accordance with guidance from the NITC;

(f) Collection, processing, and dissemination of signals intelligence information for counterintelligence purposes;

(g) Provision of signals intelligence support for the conduct of military operations in accordance with tasking, priorities and standards of timeliness assigned by the Secretary of Defense. If provision of such support requires use of national collection systems, these systems will be tasked within existing guidance from the Director of Central Intelligence;

(h) Executing the responsibilities of the Secretary of Defense as executive agent for the communications security of the United States Government;

(i) Conduct of research and development to meet needs of the United States for signals intelligence and communications security;

(j) Protection of the security of its installations, activities, information and personnel by appropriate means including such investigations of applicants, employees, contractors and other persons with similar associations with the NSA as are necessary; and

(k) Prescribing, within its field of authorized operations, security regulations covering operating practices, including the transmission, handling and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the NSA, and exercising the necessary supervisory control to ensure compliance with the regulations.

1-1203. *Offices for the collection of specialized intelligence through reconnaissance programs,* whose responsibilities shall include:

(a) Carrying out consolidated reconnaissance programs for specialized intelligence;

(b) Responding to tasking through the NITC; and

(c) Delegating authority to the various departments and agencies for research, development, procurement, and operation of designated means of collection.

1-1204. *The foreign intelligence and counterintelligence elements of the military services,* whose responsibilities shall include:

(a) Collection, production and dissemination of military and military-related foreign intelligence, including information on indications and warnings, foreign capabilities, plans and weapons systems, scientific and technical developments and narcotics production and trafficking. When collection is conducted in response to national foreign intelligence requirements, it will be tasked by the NITC. Collection of national foreign intelligence, not otherwise obtainable, outside the United States shall be coordinated with the CIA, and such collection within the United States shall be coordinated with the FBI;

(b) Conduct of counterintelligence activities outside the United States in coordination with the CIA, and within the United States in coordination with the FBI, and production and dissemination of counterintelligence studies or reports; and

(c) Monitoring of the development, procurement and management of tactical intelligence systems and equipment and conducting related research, development, and test and evaluation activities.

1-1205. *Other offices within the Department of Defense* appropriate for conduct of the intelligence missions and responsibilities assigned to the Secretary of Defense. If such other offices are used for intelligence purposes, the provisions of Sections 2-101 through 2-309 of this Order shall apply to those offices when used for those purposes.

1-13. The Department of Energy

The Secretary of Energy shall:

1-1301. Participate with the Department of State in overtly collecting political, economic and technical information with respect to foreign energy matters;

1-1302. Produce and disseminate foreign intelligence necessary for the Secretary's responsibilities;

1-1303. Participate in formulating intelligence collection and analysis requirements where the special expert capability of the Department can contribute; and

1-1304. Provide expert technical, analytical and research capability to other agencies within the Intelligence Community.

1-14. The Federal Bureau of Investigation

Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Director of the FBI shall:

1-1401. Within the United States conduct counterintelligence and coordinate counterintelligence activities of other agencies within the Intelligence Community. When a counterintelligence activity of the FBI involves military or civilian personnel of the Department of Defense, the FBI shall coordinate with the Department of Defense;

1-1402. Conduct counterintelligence activities outside the United States in coordination with the CIA, subject to the approval of the Director of Central Intelligence;

1-1403. Conduct within the United States, when requested by officials of the Intelligence Community designated by the President, lawful activities undertaken to collect foreign intelligence or support foreign intelligence collection requirements of other agencies within the Intelligence Community;

1-1404. Produce and disseminate foreign intelligence, counterintelligence and counterintelligence studies and reports; and

1-1405. Carry out or contract for research, development and procurement of technical systems and devices relating to the functions authorized above.

1-15. The Drug Enforcement Administration

Under the supervision of the Attorney General and pursuant to such regulations as the Attorney General may establish, the Administrator of DEA shall:

1-1501. Collect, produce and disseminate intelligence on the foreign and domestic aspects of narcotics production and trafficking in coordination with other agencies with responsibilities in these areas;

1-1502. Participate with the Department of State in the overt collection of general foreign political, economic and agricultural information relating to narcotics production and trafficking; and

1-1503. Coordinate with the Director of Central Intelligence to ensure that the foreign narcotics intelligence activities of DEA are consistent with other foreign intelligence programs.

SECTION 2. RESTRICTIONS ON INTELLIGENCE ACTIVITIES

2-1. Adherence to Law

2-101. *Purpose.* Information about the capabilities, intentions and activities of foreign powers, organizations, or persons and their agents is essential to informed decision-making in the areas of national defense and foreign relations. The measures employed to acquire such information should be responsive to legitimate governmental needs and must be conducted in a manner that preserves and respects established concepts of privacy and civil liberties.

2-102. *Principles of Interpretation.* Sections 2-201 through 2-309 set forth limitations which, in addition to other applicable laws, are intended to achieve the proper balance between protection of individual rights and acquisition of essential information. Those sections do not authorize any activity not authorized by sections 1-101 through 1-1503 and do not provide any exemption from any other law.

2-2. Restrictions on Certain Collection Techniques

2-201. *General Provisions.*

(a) The activities described in Sections 2-202 through 2-208 shall be undertaken only as permitted by this Order and by procedures established by the head of the agency concerned and approved by the Attorney General. Those procedures shall protect constitutional rights and privacy, ensure that information is gathered by the least intrusive means possible, and limit use of such information to lawful governmental purposes.

(b) Activities described in sections 2-202 through 2-205 for which a warrant would be required if undertaken for law enforcement rather than intelligence purposes shall not be undertaken against a United States person without a judicial warrant, unless the President has authorized the type of activity involved and the Attorney General has both approved the particular activity and determined that there is probable cause to believe that the United States person is an agent of a foreign power.

2-202. *Electronic Surveillance.* The CIA may not engage in any electronic surveillance within the

United States. No agency within the Intelligence Community shall engage in any electronic surveillance directed against a United States person abroad or designed to intercept a communication sent from, or intended for receipt within, the United States except as permitted by the procedures established pursuant to section 2-201. Training of personnel by agencies in the Intelligence Community in the use of electronic communications equipment, testing by such agencies of such equipment, and the use of measures to determine the existence and capability of electronic surveillance equipment being used unlawfully shall not be prohibited and shall also be governed by such procedures. Such activities shall be limited in scope and duration to those necessary to carry out the training, testing or countermeasures purpose. No information derived from communications intercepted in the course of such training, testing or use of countermeasures may be retained or used for any other purpose. Any electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.] shall be conducted in accordance with that Act as well as this Order.

2-203. *Television Cameras and Other Monitoring.* No agency within the Intelligence Community shall use any electronic or mechanical device surreptitiously and continuously to monitor any person within the United States, or any United States person abroad, except as permitted by the procedures established pursuant to Section 2-201. Any monitoring which constitutes electronic surveillance as defined in the Foreign Intelligence Surveillance Act of 1978 [50 U.S.C. 1801 et seq.] shall be conducted in accordance with that Act as well as this Order.

2-204. *Physical Searches.* No agency within the Intelligence Community except the FBI may conduct any unconsented physical searches within the United States. All such searches conducted by the FBI, as well as all such searches conducted by any agency within the Intelligence Community outside the United States and directed against United States persons, shall be undertaken only as permitted by procedures established pursuant to Section 2-201.

2-205. *Mail Surveillance.* No agency within the Intelligence Community shall open mail or examine envelopes in United States postal channels, except in accordance with applicable statutes and regulations. No agency within the Intelligence Community shall open mail of a United States person abroad except as permitted by procedures established pursuant to Section 2-201.

2-206. *Physical Surveillance.* The FBI may conduct physical surveillance directed against United States persons or others only in the course of a lawful investigation. Other agencies within the Intelligence Community may not undertake any physical surveillance directed against a United States person unless:

(a) The surveillance is conducted outside the United States and the person being surveilled is reasonably believed to be acting on behalf of a foreign power, engaging in international terrorist activities, or engaging in narcotics production or trafficking;

(b) The surveillance is conducted solely for the purpose of identifying a person who is in contact with someone who is the subject of a foreign intelligence or counterintelligence investigation; or

(c) That person is being surveilled for the purpose of protecting foreign intelligence and counterintelligence sources and methods from unauthorized disclosure or is the subject of a lawful counterintelligence, personnel, physical or communications security investigation.

(d) No surveillance under paragraph (c) of this section may be conducted within the United States unless the person being surveilled is a present employee, intelligence agency contractor or employee of such a contractor, or is a military person employed by a non-intelligence element of a military service. Outside the United States such surveillance may also be conducted against a former employee, intelligence agency contractor or employee of a contractor or a civilian person employed by a non-intelligence element of an agency within the Intelligence Community. A person who is in contact with such a present or former employee or contractor may also be surveilled, but only to the extent necessary to identify that person.

2-207. *Undisclosed Participation in Domestic Organizations.* No employees may join, or otherwise participate in, any organization within the United States on behalf of any agency within the Intelligence Community without disclosing their intelligence affiliation to appropriate officials of the organization, except as permitted by procedures established pursuant to Section 2-201. Such procedures shall provide for disclosure of such affiliation in all cases unless the agency head or a designee approved by the Attorney General finds that non-disclosure is essential to achieving lawful purposes, and that finding is subject to review by the Attorney General. Those procedures shall further limit undisclosed participation to cases where:

(a) The participation is undertaken on behalf of the FBI in the course of a lawful investigation;

(b) The organization concerned is composed primarily of individuals who are not United States persons and is reasonably believed to be acting on behalf of a foreign power; or

(c) The participation is strictly limited in its nature, scope and duration to that necessary for other lawful purposes relating to foreign intelligence and is a type of participation approved by the Attorney General and set forth in a public document. No such participation may be undertaken for the purpose of influencing the activity of the organization or its members.

2-208. *Collection of Nonpublicly Available Information.* No agency within the Intelligence Community may collect, disseminate or store information concerning the activities of United States persons that is not available publicly, unless it does so with their consent or as permitted by procedures established pursuant to Section 2-201. Those procedures shall limit collection, storage or dissemination to the following types of information:

(a) Information concerning corporations or other commercial organizations or activities that constitutes foreign intelligence or counterintelligence;

(b) Information arising out of a lawful counterintelligence or personnel, physical or communications security investigation;

(c) Information concerning present or former employees, present or former intelligence agency contractors or their present or former employees, or applicants for any such employment or contracting, which is needed to protect foreign intelligence or counterintelligence sources or methods from unauthorized disclosure;

(d) Information needed solely to identify individuals in contact with those persons described in paragraph (c) of this section or with someone who is the subject of a lawful foreign intelligence or counterintelligence investigation;

(e) Information concerning persons who are reasonably believed to be potential sources or contacts, but only for the purpose of determining the suitability or credibility of such persons;

(f) Information constituting foreign intelligence or counterintelligence gathered abroad or from electronic surveillance conducted in compliance with Section 2-202 or from cooperating sources in the United States;

(g) Information about a person who is reasonably believed to be acting on behalf of a foreign power, engaging in international terrorist activities or narcotics production or trafficking, or endangering the safety of a person protected by the United States Secret Service or the Department of State;

(h) Information acquired by overhead reconnaissance not directed at specific United States persons;

(i) Information concerning United States persons abroad that is obtained in response to requests from the Department of State for support of its consular responsibilities relating to the welfare of those persons;

(j) Information collected, received, disseminated or stored by the FBI and necessary to fulfill its lawful investigative responsibilities; or

(k) Information concerning persons or activities that pose a clear threat to any facility or personnel of an agency within the Intelligence Community. Such information may be retained only by the agency threatened and, if appropriate, by the United States Secret Service and the FBI.

2-3. Additional Restrictions and Limitations

2-301. *Tax Information.* No agency within the Intelligence Community shall examine tax returns or tax information except as permitted by applicable law.

2-302. *Restrictions on Experimentation.* No agency within the Intelligence Community shall sponsor, contract for, or conduct research on human subjects except in accordance with guidelines issued by the Department of Health, Education and Welfare. The subject's informed consent shall be documented as required by those guidelines.

2-303. *Restrictions on Contracting.* No agency within the Intelligence Community shall enter into a contract or arrangement for the provision of goods or services with private companies or institutions in the United States unless the agency sponsorship is known to the appropriate officials of the company or institution. In the case of any company or institution other than an academic institution, intelligence agency sponsorship may be concealed where it is determined, pursuant to procedures approved by the Attorney General, that such concealment is necessary to maintain essential cover or proprietary arrangements for authorized intelligence purposes.

2-304. *Restrictions on Personnel Assigned to Other Agencies.* An employee detailed to another agency within the federal government shall be responsible to the host agency and shall not report to the parent agency on the affairs of the host agency unless so directed by the host agency. The head of the host agency, and any successor, shall be informed of the employee's relationship with the parent agency.

2-305. *Prohibition on Assassination.* No person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination.

2-306. *Restrictions on Special Activities.* No component of the United States Government except an agency within the Intelligence Community may conduct any special activity. No such agency except the CIA (or the military services in wartime) may conduct any special activity unless the President determines, with the SCC's advice, that another agency is more likely to achieve a particular objective.

2-307. *Restrictions on Indirect Participation in Prohibited Activities.* No agency of the Intelligence Community shall request or otherwise encourage, directly or indirectly, any person, organization, or government agency to undertake activities forbidden by this Order or by applicable law.

2-308. *Restrictions on Assistance to Law Enforcement Authorities.* Agencies within the Intelligence Community other than the FBI shall not, except as expressly authorized by law:

(a) Provide services, equipment, personnel or facilities to the Law Enforcement Assistance Administration (or its successor agencies) or to state or local police organizations of the United States; or

(b) Participate in or fund any law enforcement activity within the United States.

2-309. *Permissible Assistance to Law Enforcement Authorities.* The restrictions in Section 2-308 shall not preclude:

(a) Cooperation with appropriate law enforcement agencies for the purpose of protecting the personnel and facilities of any agency within the Intelligence Community;

(b) Participation in law enforcement activities, in accordance with law and this Order, to investigate or prevent clandestine intelligence activities by foreign powers, international narcotics production and trafficking, or international terrorist activities; or

(c) Provision of specialized equipment, technical knowledge, or assistance of expert personnel for use by any department or agency or, when lives are endangered, to support local law enforcement agencies. Provision of assistance by expert personnel shall be governed by procedures approved by the Attorney General.

2-310. *Permissible Dissemination and Storage of Information.* Nothing in Sections 2-201 through 2-309 of this Order shall prohibit:

(a) Dissemination to appropriate law enforcement agencies of information which indicates involvement in activities that may violate federal, state, local or foreign laws;

(b) Storage of information required by law to be retained;

(c) Dissemination of information covered by Section 2-208 (a)-(j) to agencies within the Intelligence Community or entities of cooperating foreign governments; or

(d) Lawful storage or dissemination of information solely for administrative purposes not related to intelligence or security.

SECTION 3. OVERSIGHT OF INTELLIGENCE ORGANIZATIONS

3-1. Intelligence Oversight Board

3-101. *Membership.* The President's Intelligence Oversight Board (IOB) shall function within the White House. The IOB shall have three members who shall be appointed by the President and who shall be from outside the government and be qualified on the basis of ability, knowledge, diversity of background and experience. No member shall have any personal interest in any contractual relationship with any agency within the Intelligence Community. One member shall be designated by the President as chairman.

3-102. *Duties.* The IOB shall:

(a) Review periodically the practices and procedures of the Inspectors General and General Counsel with responsibilities for agencies within the Intelligence Community for discovering and reporting to the IOB intelligence activities that raise questions of legality or propriety, and consider written and oral reports referred under Section 3-201;

(b) Review periodically for adequacy the internal guidelines of each agency within the Intelligence Community concerning the legality or propriety of intelligence activities;

(c) Report periodically, at least quarterly, to the President on its findings; and report in a timely manner to the President any intelligence activities that raise serious questions of legality or propriety;

(d) Forward to the Attorney General, in a timely manner, reports received concerning intelligence activities in which a question of legality has been raised or which the IOB believes to involve questions of legality; and

(e) Conduct such investigations of the intelligence activities of agencies within the Intelligence Community as the Board deems necessary to carry out its functions under this Order.

3-103. *Restriction on Staff.* No person who serves on the staff of the IOB shall have any contractual or employment relationship with any agency within the Intelligence Community.

3-2. Inspectors General and General Counsel

Inspectors General and General Counsel with responsibility for agencies within the Intelligence Community shall:

3-201. Transmit timely reports to the IOB concerning any intelligence activities that come to their attention and that raise questions of legality or propriety;

3-202. Promptly report to the IOB actions taken concerning the Board's findings on intelligence activities that raise questions of legality or propriety;

3-203. Provide to the IOB information requested concerning the legality or propriety of intelligence activities within their respective agencies;

3-204. Formulate practices and procedures for discovering and reporting to the IOB intelligence activities that raise questions of legality or propriety; and

3-205. Report to the IOB any occasion on which the Inspectors General or General Counsel were directed not to report any intelligence activity to the IOB which they believed raised questions of legality or propriety.

3-3. Attorney General

The Attorney General shall:

3-301. Receive and consider reports from agencies within the Intelligence Community forwarded by the IOB;

3-302. Report to the President in a timely fashion any intelligence activities which raise questions of legality;

3-303. Report to the IOB and to the President in a timely fashion decisions made or actions taken in response to reports from agencies within the Intelligence Community forwarded to the Attorney General by the IOB;

3-304. Inform the IOB of legal opinions affecting the operations of the Intelligence Community; and

3-305. Establish or approve procedures, as required by this Order, for the conduct of intelligence activities. Such procedures shall ensure compliance with law, protect constitutional rights and privacy, and ensure that any intelligence activity within the United States or directed against any United States person is conducted by the least intrusive means possible. The procedures shall also ensure that any use, dissemination and storage of information about United States persons acquired through intelligence activities is limited to that necessary to achieve lawful governmental purposes.

3-4. Congressional Intelligence Committees

Under such procedures as the President may establish and consistent with applicable authorities and duties, including those conferred by the Constitution upon the Executive and Legislative Branches and by law to protect sources and methods, the Director of Central Intelligence and heads of departments and agencies of the United States involved in intelligence activities shall:

3-401. Keep the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate fully and currently informed concerning intelligence activities, including any significant anticipated activities which are the responsibility of, or engaged in, by such department or agency. This requirement does not constitute a condition precedent to the implementation of such intelligence activities;

3-402. Provide any information or document in the possession, custody, or control of the department or agency or person paid by such department or agency, within the jurisdiction of the Permanent Select Committee on Intelligence of the House of Representatives or the Select Committee on Intelligence of the Senate, upon the request of such committee; and

3-403. Report in a timely fashion to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate information relating to intelligence activities that are illegal or improper and corrective actions that are taken or planned.

SECTION 4. GENERAL PROVISIONS

4-1. Implementation

4-101. Except as provided in section 4-105 of this section, this Order shall supersede Executive Order 11905, "United States Foreign Intelligence Activities," dated February 18, 1976 [set out as a note under this section]; Executive Order 11985, same subject, dated May 13, 1977 [amending Ex. Ord. No. 11905]; and Executive Order 11994, same subject, dated June 1, 1977 [amending Ex. Ord. No. 11905].

4-102. The NSC, the Secretary of Defense, the Attorney General and the Director of Central Intelligence shall issue such appropriate directives and procedures as are necessary to implement this Order.

4-103. Heads of agencies within the Intelligence Community shall issue appropriate supplementary directives and procedures consistent with this Order.

4-104. The Attorney General shall have sole authority to issue and revise procedures required by section 2-201 for the activities of the FBI relating to foreign intelligence and counterintelligence.

4-105. Where intelligence activities under this Order are to be conducted pursuant to procedures approved or agreed to by the Attorney General, those activities may be conducted under terms and conditions of Executive Order 11905 and any procedures promulgated thereunder until such Attorney General procedures are established. Such Attorney General procedures shall be established as expeditiously as possible after the issuance of this Order.

44-106. In some instances, the documents that implement this Order will be classified because of the sensitivity of the information and its relation to national security. All instructions contained in classified documents will be consistent with this Order. All procedures promulgated pursuant to this Order will be made available to the Congressional intelligence committees in accordance with Section 3-402.

4-107. Unless otherwise specified, the provisions of this Order shall apply to activities both within and outside the United States, and all references to law are to applicable laws of the United States, including the Constitution and this Order. Nothing in this Order shall be construed to apply to or interfere with any authorized civil or criminal law enforcement responsibility of any department or agency.

4-2. Definitions

For the purposes of this Order, the following terms shall have these meanings:

4-201. *Communications security* means protective measures taken to deny unauthorized persons information derived from telecommunications of the United States Government related to national security and to ensure the authenticity of such telecommunications.

4-202. *Counterintelligence* means information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations or persons, but not including personnel, physical, document, or communications security programs.

4-203. *Electronic Surveillance* means acquisition of a nonpublic communication by electronic means without the consent of a person who is a party to an electronic communication or, in the case of a nonelectronic communication, without the consent of a person who is visibly present at the place of communication, but not including the use of radio direction finding equipment solely to determine the location of a transmitter.

4-204. *Employee* means a person employed by, assigned to, or acting for an agency within the Intelligence Community.

4-205. *Foreign Intelligence* means information relating to the capabilities, intentions and activities of foreign powers, organizations or persons, but not including counterintelligence except for information on international terrorist activities.

4-206. *Intelligence* means foreign intelligence and counterintelligence.

4-207. *Intelligence Community* and *agency or agencies within the Intelligence Community* refer to the following organizations:

(a) The Central Intelligence Agency (CIA);

(b) The National Security Agency (NSA);
(c) The Defense Intelligence Agency;
(d) The Offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance programs;
(e) The Bureau of Intelligence and Research of the Department of State;
(f) The intelligence elements of the military services, the Federal Bureau of Investigation (FBI), the Department of the Treasury, the Department of Energy, and the Drug Enforcement Administration (DEA); and
(g) The staff elements of the Office of the Director of Central Intelligence.

4-208. *Intelligence product* means the estimates, memoranda and other reports produced from the analysis of available information.

4-209. *International terrorist activities* means any activity or activities which:
(a) involves killing, causing serious bodily harm, kidnapping, or violent destruction of property, or an attempt or credible threat to commit such acts; *and*
(b) appears intended to endanger a protectee of the Secret Service or the Department of State or to further political, social or economic goals by intimidating or coercing a civilian population or any segment thereof, influencing the policy of a government or international organization by intimidation or coercion, or obtaining widespread publicity for a group or its cause; *and*
(c) transcends national boundaries in terms of the means by which it is accomplished, the civilian population, government, or international organization it appears intended to coerce or intimidate, or the locale in which its perpetrators operate or seek asylum.

4-210. *The National Foreign Intelligence Program* includes the programs listed below, but its composition shall be subject to review by the National Security Council and modification by the President.
(a) The programs of the CIA;
(b) The Consolidated Cryptologic Program, the General Defense Intelligence Program, and the programs of the offices within the Department of Defense for the collection of specialized national foreign intelligence through reconnaissance except such elements as the Director of Central Intelligence and the Secretary of Defense agree should be excluded;
(c) Other programs of agencies within the Intelligence Community designated jointly by the Director of Central Intelligence and the head of the department or by the President as national foreign intelligence or counterintelligence activities;
(d) Activities of the staff elements of the Office of the Director of Central Intelligence.
(e) Activities to acquire the intelligence required for the planning and conduct of tactical operations by the United States military forces are not included in the National Foreign Intelligence Program.

4-211. *Physical surveillance* means an unconsented, systematic and deliberate observation of a person by any means on a continuing basis, or unconsented acquisition of a nonpublic communication by a person not a party thereto or visibly present thereat through any means not involving electronic surveillance. This definition does not include overhead reconnaissance not directed at specific United States persons.

4-212. *Special activities* means activities conducted abroad in support of national foreign policy objectives which are designed to further official United States programs and policies abroad and which are planned and executed so that the role of the United States Government is not apparent or acknowledged publicly, and functions in support of such activities, but not including diplomatic activity or the collection and production of intelligence or related support functions.

4-213. *United States*, when used to describe a place, includes the territories of the United States.

4-214. *United States person* means a citizen of the United States, an alien lawfully admitted for permanent residence, an unincorporated association organized in the United States or substantially composed of United States citizens or aliens admitted for permanent residence, or a corporation incorporated in the United States.

JIMMY CARTER.

EX. ORD. NO. 12065. NATIONAL SECURITY INFORMATION

Ex. Ord. No. 12065, June 28, 1978, 43 F.R. 28949, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12163, Sept. 29, 1979, 44 F.R. 56673, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, in order to balance the public's interest in access to Government information with the need to protect certain national security information from disclosure, it is hereby ordered as follows:

TABLE OF CONTENTS

SECTION 1.	ORIGINAL CLASSIFICATION:
1-1	Classification Designation
1-2	Classification Authority
1-3	Classification Requirements
1-4	Duration of Classification
1-5	Identification and Markings
1-6	Prohibitions
SECTION 2.	DERIVATIVE CLASSIFICATION:
2-1	Use of Derivative Classification
2-2	Classification Guides
2-3	New Material
SECTION 3.	DECLASSIFICATION AND DOWNGRADING:
3-1	Declassification Authority
3-2	Transferred Information
3-3	Declassification Policy
3-4	Systematic Review for Declassification
3-5	Mandatory Review for Declassification
3-6	Downgrading
SECTION 4.	SAFEGUARDING:
4-1	General Restrictions
4-2	Special Access Programs
4-3	Access by Historical Researchers and Former Presidential Appointees
4-4	Reproduction Controls
SECTION 5.	IMPLEMENTATION AND REVIEW:
5-1	Oversight
5-2	Information Security Oversight Office
5-3	Interagency Information Security Committee
5-4	General Responsibilities
5-5	Administrative Sanctions
SECTION 6.	GENERAL PROVISIONS:
6-1	Definitions
6-2	General

SECTION 1. ORIGINAL CLASSIFICATION

1-1. CLASSIFICATION DESIGNATION

1-101. Except as provided in the Atomic Energy Act of 1954, as amended [see Short Title note set out under section 2011 of Title 42, The Public Health and Welfare], this Order provides the only basis for classifying information. Information may be classified in one of the three designations listed below. If there is reasonable doubt which designation is appropriate, or whether the information should be classified at all, the less restrictive designation should be used, or the information should not be classified.

1-102. "Top Secret" shall be applied only to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security.

1-103. "Secret" shall be applied only to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security.

1-104. "Confidential" shall be applied to information, the unathorized disclosure of which reasonably could be expected to cause identifiable damage to the national security.

1-2. CLASSIFICATION AUTHORITY

1-201. *Top Secret.* Authority for original classification of information as Top Secret may be exercised

only by the President, by such officials as the President may designate by publication in the Federal Register, by the agency heads listed below, and by officials to whom such authority is delegated in accordance with Section 1-204:

The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Secretary of the Army
The Secretary of the Navy
The Secretary of the Air Force
The Attorney General
The Secretary of Energy
The Chairman, Nuclear Regulatory Commission
The Director, Arms Control and Disarmament Agency
The Director of Central Intelligence
The Administrator, National Aeronautics and Space Administration
The Director of the Federal Emergency Management Agency
The Administrator of General Services (delegable only to the Director, Information Security Oversight Office)

1-202. *Secret.* Authority for original classification of information as Secret may be exercised only by such officials as the President may designate by publication in the Federal Register, by the agency heads listed below, by officials who have Top Secret classification authority, and by officials to whom such authority is delegated in accordance with Section 1-204:

The Secretary of Commerce
The Secretary of Transportation
The Director of the United States International Development Cooperation Agency
The Director, International Communication Agency

1-203. *Confidential.* Authority for original classification of information as Confidential may be exercised only by such officials as the President may designate by publication in the Federal Register, by the agency heads listed below, by officials who have Top Secret or Secret classification authority, and by officials to whom such authority is delegated in accordance with Section 1-204:

The President and Chairman, Export-Import Bank of the United States
The President and Chief Executive Officer, Overseas Private Investment Corporation

1-204. *Limitations on Delegation of Classification Authority.*

(a) Authority for original classification of information as Top Secret may be delegated only to principal subordinate officials who have a frequent need to exercise such authority as determined by the President or by agency heads listed in Section 1-201.

(b) Authority for original classification of information as Secret may be delegated only to subordinate officials who have a frequent need to exercise such authority as determined by the President, by agency heads listed in Sections 1-201 and 1-202, and by officials with Top Secret classification authority.

(c) Authority for original classification of information as Confidential may be delegated only to subordinate officials who have a frequent need to exercise such authority as determined by the President, by agency heads listed in Sections 1-201, 1-202, and 1-203, and-by officials with Top Secret classification authority.

(d) Delegated original classification authority may not be redelegated.

(e) Each delegation of original classification authority shall be in writing by name or title of position held.

(f) Delegations of original classification authority shall be held to an absolute minimum. Periodic reviews of such delegations shall be made to ensure that the officials so designated have demonstrated a continuing need to exercise such authority.

1-205. *Exceptional Cases.* When an employee or contractor of an agency that does not have original classification authority originates information believed to require classification, the information shall be protected in the manner prescribed by this Order and implementing directives. The information shall be transmitted promptly under appropriate safeguards to the agency which has appropriate subject matter interest and classification authority. That agency shall decide within 30 days whether to classify that information. If it is not clear which agency should get the information, it shall be sent to the Director of the Information Security Oversight Office established in Section 5-2 for a determination.

1-3. Classification Requirements

1-301. Information may not be considered for classification unless it concerns:

(a) military plans, weapons, or operations;

(b) foreign government information;

(c) intelligence activities, sources or methods;

(d) foreign relations or foreign activities of the United States;

(e) scientific, technological, or economic matters relating to the national security;

(f) United States Government programs for safeguarding nuclear materials or facilities; or

(g) other categories of information which are related to national security and which require protection against unauthorized disclosure as determined by the President, by a person designated by the President pursuant to Section 1-201, or by an agency head.

1-302. Even though information is determined to concern one or more of the criteria in Section 1-301, it may not be classified unless an original classification authority also determines that its unauthorized disclosure reasonably could be expected to cause at least identifiable damage to the national security.

1-303. Unauthorized disclosure of foreign government information or the identity of a confidential foreign source is presumed to cause at least identifiable damage to the national security.

1-304. Each determination under the criterion of Section 1-301(g) shall be reported promptly to the Director of the Information Security Oversight Office.

1-4. Duration of Classification

1-401. Except as permitted in Section 1-402, at the time of the original classification each original classification authority shall set a date or event for automatic declassification no more than six years later.

1-402. Only officials with Top Secret classification authority and agency heads listed in Section 1-2 may classify information for more than six years from the date of the original classification. This authority shall be used sparingly. In such cases, a declassification date or event, or a date for review, shall be set. This date or event shall be as early as national security permits and shall be no more than twenty years after original classification, except that for foreign government information the date or event may be up to thirty years after original classification.

1-5. Identification and Markings

1-501. At the time of original classification, the following shall be shown on the face of paper copies of all classified documents:

(a) the identity of the original classification authority;

(b) the office of origin;

(c) the date or event for declassification or review; and

(d) one of the three classification designations defined in Section 1-1.

1-502. Documents classified for more than six years shall also be marked with the identity of the official who authorized the prolonged classification. Such documents shall be annotated with the reason the classification is expected to remain necessary, under the requirements of Section 1-3, despite the passage of time. The reason for the prolonged classification may be stated by reference to criteria set forth in agency im-

plementing regulations. These criteria shall explain in narrative form the reason the information needs to be protected beyond six years. If the individual who signs or otherwise authenticates a document also is authorized to classify it, no further annotation of identity is required.

1-503. Only the designations prescribed by this Order may be used to identify classified information. Markings such as "For Official Use Only" and "Limited Official Use" may not be used for that purpose. Terms such as "Conference" or "Agency" may not be used in conjunction with the classification designations prescribed by this Order; e.g., "Agency Confidential" or "Conference Confidential."

1-504. In order to facilitate excerpting and other uses, each classified document shall, by marking or other means, indicate clearly which portions are classified, with the applicable classification designation, and which portions are not classified. The Director of the Information Security Oversight Office may, for good cause, grant and revoke waivers of this requirement for specified classes of documents or information.

1-505. Foreign government information shall either retain its original classification designation or be assigned a United States classification designation that shall ensure a degree of protection equivalent to that required by the entity that furnished the information.

1-506. Classified documents that contain or reveal information that is subject to special dissemination and reproduction limitations authorized by this Order shall be marked clearly so as to place the user on notice of the restrictions.

1-6. Prohibitions

1-601. Classification may not be used to conceal violations of law, inefficiency, or administrative error, to prevent embarrassment to a person, organization or agency, or to restrain competition.

1-602. Basic scientific research information not clearly related to the national security may not be classified.

1-603. A product of non-government research and development that does not incorporate or reveal classified information to which the producer or developer was given prior access may not be classified under this Order until and unless the government acquires a proprietary interest in the product. This Order does not affect the provisions of the Patent Secrecy Act of 1952 (35 U.S.C. 181-188).

1-604. References to classified documents that do not disclose classified information may not be classified or used as a basis for classification.

1-605. Classification may not be used to limit dissemination of information that is not classifiable under the provisions of this Order or to prevent or delay the public release of such information.

1-606. No document originated on or after the effective date of this Order may be classified after an agency has received a request for the document under the Freedom of Information Act [5 U.S.C. 552] or the Mandatory Review provisions of this Order (Section 3-5), unless such classification is consistent with this Order and is authorized by the agency head or deputy agency head. Documents originated before the effective date of this Order and subject to such a request may not be classified unless such classification is consistent with this Order and is authorized by the senior official designated to oversee the agency information security program or by an official with Top Secret classification authority. Classification authority under this provision shall be exercised personally, on a document-by-document basis.

1-607. Classification may not be restored to documents already declassified and released to the public under this Order or prior Orders.

SECTION 2. DERIVATIVE CLASSIFICATION

2-1. Use of Derivative Classification

2-101. Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

2-102. Persons who apply such derivative classification markings shall:

(a) respect original classification decisions;

(b) verify the information's current level of classification so far as practicable before applying the markings; and

(c) carry forward to any newly created documents the assigned dates or events for declassification or review and any additional authorized markings, in accordance with Sections 2-2 and 2-301 below. A single marking may be used for documents based on multiple sources.

2-2. Classification Guides

2-201. Classification guides used to direct derivative classification shall specifically identify the information to be classified. Each classification guide shall specifically indicate how the designations, time limits, markings, and other requirements of this Order are to be applied to the information.

2-202. Each such guide shall be approved personally and in writing by an agency head listed in Section 1-2 or by an official with Top Secret classification authority. Such approval constitutes an original classification decision.

2-3. New Material

2-301. New material that derives its classification from information classified on or after the effective date of this Order shall be marked with the declassification date or event, or the date for review, assigned to the source information.

2-302. New material that derives its classification from information classified under prior Orders shall be treated as follows:

(a) If the source material bears a declassification date or event twenty years or less from the date of origin, that date or event shall be carried forward on the new material.

(b) If the source material bears no declassification date or event or is marked for declassification beyond twenty years, the new material shall be marked with a date for review for declassification at twenty years from the date of original classification of the source material.

(c) If the source material is foreign government information bearing no date or event for declassification or is marked for declassification beyond thirty years, the new material shall be marked for review for declassification at thirty years from the date of original classification of the source material.

SECTION 3. DECLASSIFICATION AND DOWNGRADING

3-1. Declassification Authority

3-101. The authority to declassify or downgrade information classified under this or prior Orders shall be exercised only as specified in Section 3-1.

3-102. Classified information may be declassified or downgraded by the official who authorized the original classification if that official is still serving in the same position, by a successor, or by a supervisory official of either.

3-103. Agency heads named in Section 1-2 shall designate additional officials at the lowest practicable echelons to exercise declassification and downgrading authority.

3-104. If the Director of the Information Security Oversight Office determines that information is classified in violation of this Order, the Director may require the information to be declassified by the agency that originated the classification. Any such decision by the Director may be appealed to the National Security Council. The information shall remain classified until the appeal is decided or until one year from the date of the Director's decision, whichever occurs first.

3-105. The provisions of this Order relating to declassification shall also apply to agencies which, under the terms of this Order, do not have original classification authority but which had such authority under prior Orders.

3-2. Transferred Information

3-201. For classified information transferred in conjunction with a transfer of functions—not merely for storage purposes—the receiving agency shall be deemed to be the originating agency for all purposes under this Order.

3-202. For classified information not transferred in accordance with Section 3-201, but originated in an agency which has ceased to exist, each agency in possession shall be deemed to be the originating agency for all purposes under this Order. Such information may be declassified or downgraded by the agency in possession after consulting with any other agency having an interest in the subject matter.

3-203. Classified information transferred to the General Services Administration for accession into the Archives of the United States shall be declassified or downgraded by the Archivist of the United States in accordance with this Order, the directives of the Information Security Oversight Office, and the agency guidelines.

3-204. After the termination of a Presidential administration, the Archivist of the United States shall review and declassify or downgrade all information classified by the President, the White House Staff, committees or commissions appointed by the President, or others acting on the President's behalf. Such declassification shall only be undertaken in accordance with the provisions of Section 3-504.

3-3. Declassification Policy

3-301. Declassification of classified information shall be given emphasis comparable to that accorded classification. Information classified pursuant to this and prior Orders shall be declassified as early as national security considerations permit. Decisions concerning declassification shall be based on the loss of the information's sensitivity with the passage of time or on the occurrence of a declassification event.

3-302. When information is reviewed for declassification pursuant to this Order or the Freedom of Information Act [5 U.S.C. 552], it shall be declassified unless the declassification authority established pursuant to Section 3-1 determines that the information continues to meet the classification requirements prescribed in Section 1-3 despite the passage of time.

3-303. It is presumed that information which continues to meet the classification requirements in Section 1-3 requires continued protection. In some cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the agency head, a senior agency official with responsibility for processing Freedom of Information Act [5 U.S.C. 552], requests or Mandatory Review requests under this Order, an official with Top Secret classification authority, or the Archivist of the United States in the case of material covered in Section 3-503. That official will determine whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

3-4. Systematic Review for Declassification

3-401. Classified information constituting permanently valuable records of the Government, as defined by 44 U.S.C. 2103, and information in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C. 2107 or 2107 note, shall be reviewed for declassification as it becomes twenty years old. Agency heads listed in Section 1-2 and officials designated by the President pursuant to Section 1-201 of this Order may extend classification beyond twenty years, but only in accordance with Sections 3-3 and 3-402. This authority may not be delegated. When classification is extended beyond twenty years, a date no more than ten years later shall be set for declassification or for the next review. That date shall be marked on the document. Subsequent reviews for declassification shall be set at no more than ten year intervals. The Director of the Information Security Oversight Office may extend the period between subsequent reviews for specific categories of documents or information.

3-402. Within 180 days after the effective date of this Order, the agency heads listed in Section 1-2 and the heads of agencies which had original classification authority under prior orders shall, after consultation with the Archivist of the United States and review by the Information Security Oversight Office, issue and maintain guidelines for systematic review covering twenty-year old classified information under their jurisdiction. These guidelines shall state specific, limited categories of information which, because of their national security sensitivity, should not be declassified automatically but should be reviewed item-by-item to determine whether continued protection beyond twenty years is needed. These guidelines shall be authorized for use by the Archivist of the United States and may, upon approval of the issuing authority, be used by any agency having custody of the information. All information not identified in these guidelines as requiring review and for which a prior automatic declassification date has not been established shall be declassified automatically at the end of twenty years from the date of original classification.

3-403. Notwithstanding Sections 3-401 and 3-402, the Secretary of Defense may establish special procedures for systematic review and declassification of classified cryptologic information, and the Director of Central Intelligence may establish special procedures for systematic review and declassification of classified information concerning the identities of clandestine human agents. These procedures shall be consistent, so far as practicable, with the objectives of Sections 3-401 and 3-402. Prior to implementation, they shall be reviewed and approved by the Director of the Information Security Oversight Office and, with respect to matters pertaining to intelligence sources and methods, by the Director of Central Intelligence. Disapproval of procedures by the Director of the Information Security Oversight Office may be appealed to the National Security Council. In such cases, the procedures shall not be implemented until the appeal is decided.

3-404. Foreign government information shall be exempt from automatic declassification and twenty year systematic review. Unless declassified earlier, such information shall be reviewed for declassification thirty years from its date of origin. Such review shall be in accordance with the provisions of Section 3-3 and with guidelines developed by agency heads in consultation with the Archivist of the United States and, where appropriate, with the foreign government or international organization concerned. These guidelines shall be authorized for use by the Archivist of the United States and may, upon approval of the issuing authority, be used by any agency having custody of the information.

3-405. Transition to systematic review at twenty years shall be implemented as rapidly as practicable and shall be completed no more than ten years from the effective date of this Order.

3-5. Mandatory Review for Declassification

3-501. Agencies shall establish a mandatory review procedure to handle requests by a member of the public, by a government employee, or by an agency, to declassify and release information. This procedure shall apply to information classified under this Order or prior Orders. Except as provided in Section 3-503, upon such a request the information shall be reviewed

for possible declassification, provided the request reasonably describes the information. Requests for declassification under this provision shall be acted upon within 60 days. After review, the information or any reasonably segregable portion thereof that no longer requires protection under this Order shall be declassified and released unless withholding is otherwise warranted under applicable law.

3-502. Requests for declassification which are submitted under the provisions of the Freedom of Information Act [5 U.S.C. 552], shall be processed in accordance with the provisions of that Act.

3-503. Information less than ten years old which was originated by the President, by the White House Staff, or by committees or commissions appointed by the President, or by others acting on behalf of the President, including such information in the possession and control of the Administrator of General Services pursuant to 44 U.S.C. 2107 or 2107 note, is exempted from the provisions of Section 3-501. Such information over ten years old shall be subject to mandatory review for declassification. Requests for mandatory review shall be processed in accordance with procedures developed by the Archivist of the United States. These procedures shall provide for consultation with agencies having primary subject matter interest. Any decision by the Archivist may be appealed to the Director of the Information Security Oversight Office. Agencies with primary subject matter interest shall be notified promptly of the Director's decision on such appeals and may further appeal to the National Security Council through the process set forth in Section 3-104.

3-504. Requests for declassification of classified documents originated by an agency but in the possession and control of the Administrator of General Services, pursuant to 44 U.S.C. 2107 or 2107 note, shall be referred by the Archivist to the agency of origin for processing in accordance with Section 3-501 and for direct response to the requestor. The Archivist shall inform requestors of such referrals.

3-505. No agency in possession of a classified document may, in response to a request for the document made under the Freedom of Information Act [5 U.S.C. 552], or this Order's Mandatory Review provision, refuse to confirm the existence or non-existence of the document, unless the fact of its existence or non-existence would itself be classifiable under this Order.

3-6. Downgrading

3-601. Classified information that is marked for automatic downgrading is downgraded accordingly without notification to holders.

3-602. Classified information that is not marked for automatic downgrading may be assigned a lower classification designation by the originator or by other authorized officials when such downgrading is appropriate. Notice of downgrading shall be provided to holders of the information to the extent practicable.

SECTION 4. SAFEGUARDING

4-1. General Restrictions on Access

4-101. No person may be given access to classified information unless that person has been determined to be trustworthy and unless access is necessary for the performance of official duties.

4-102. All classified information shall be marked conspicuously to put users on notice of its current classification status and, if appropriate, to show any special distribution or reproduction restrictions authorized by this Order.

4-103. Controls shall be established by each agency to ensure that classified information is used, processed, stored, reproduced, and transmitted only under conditions that will provide adequate protection and prevent access by unauthorized persons.

4-104. Classified information no longer needed in current working files or for reference or record purposes shall be processed for appropriate disposition in accordance with the provisions of Chapters 21 and 33 of Title 44 of the United States Code, which governs disposition of Federal records.

4-105. Classified information disseminated outside the Executive branch shall be given protection equivalent to that afforded within the Executive branch.

4-2. Special Access Programs

4-201. Agency heads listed in Section 1-201 may create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to this Order or prior Orders. Such programs may be created or continued only by written direction and only by those agency heads and, for matters pertaining to intelligence sources and methods, by the Director of Central Intelligence. Classified information in such programs shall be declassified according to the provisions of Section 3.

4-202. Special access programs may be created or continued only on a specific showing that:

(a) normal management and safeguarding procedures are not sufficient to limit need-to-know or access;

(b) the number of persons who will need access will be reasonably small and commensurate with the objective of providing extra protection for the information involved; and

(c) the special access controls balance the need to protect the information against the full spectrum of needs to use the information.

4-203. All special access programs shall be reviewed regularly and, except those required by treaty or international agreement, shall terminate automatically every five years unless renewed in accordance with the procedures in Section 4-2.

4-204. Within 180 days after the effective date of this Order, agency heads shall review all existing special access programs under their jurisdiction and continue them only in accordance with the procedures in Section 4-2. Each of those agency heads shall also establish and maintain a system of accounting for special access programs. The Director of the Information Security Oversight Office shall have non-delegable access to all such accountings.

4-3. Access by Historical Researchers and Former Presidential Appointees

4-301. The requirement in Section 4-101 that access to classified information may be granted only as is necessary for the performance of official duties may be waived as provided in Section 4-302 for persons who:

(a) are engaged in historical research projects, or

(b) previously have occupied policy-making positions to which they were appointed by the President.

4-302. Waivers under Section 4-301 may be granted only if the agency with jurisdiction over the information:

(a) makes a written determination that access is consistent with the interests of national security;

(b) takes appropriate steps to ensure that access is limited to specific categories of information over which that agency has classification jurisdiction;

(c) limits the access granted to former Presidential appointees to items that the person originated, reviewed, signed or received while serving as a Presidential appointee.

4-4. Reproduction Controls

4-401. Top Secret documents may not be reproduced without the consent of the originating agency unless otherwise marked by the originating office.

4-402. Reproduction of Secret and Confidential documents may be restricted by the originating agency.

4-403. Reproduced copies of classified documents are subject to the same accountability and controls as the original documents.

4-404. Records shall be maintained by all agencies that reproduce paper copies of classified documents to

show the number and distribution of reproduced copies of all Top Secret documents, of all documents covered by special access programs distributed outside the originating agency, and of all Secret and all Confidential documents which are marked with special dissemination and reproduction limitations in accordance with Section 1-506.

4-405. Sections 4-401 and 4-402 shall not restrict the reproduction of documents for the purpose of facilitating review for declassification. However, such reproduced documents that remain classified after review must be destroyed after they are used.

SECTION 5. IMPLEMENTATION AND REVIEW

5-1. Oversight

5-101. The National Security Council may review all matters with respect to the implementation of this Order and shall provide overall policy direction for the information security program.

5-102. The Administrator of General Services shall be responsible for implementing and monitoring the program established pursuant to this Order. This responsibility shall be delegated to an Information Security Oversight Office.

5-2. Information Security Oversight Office

5-201. The Information Security Oversight Office shall have a full-time Director appointed by the Administrator of General Services subject to approval by the President. The Administrator also shall have authority to appoint a staff for the Office.

5-202. The Director shall:

(a) oversee agency actions to ensure compliance with this Order and implementing directives;

(b) consider and take action on complaints and suggestions from persons within or outside the Government with respect to the administration of the information security program, including appeals from decisions on declassification requests pursuant to Section 3-503;

(c) exercise the authority to declassify information provided by Sections 3-104 and 3-503;

(d) develop, in consultation with the agencies, and promulgate, subject to the approval of the National Security Council, directives for the implementation of this Order which shall be binding on the agencies;

(e) report annually to the President through the Administrator of General Services and the National Security Council on the implementation of this Order;

(f) review all agency implementing regulations and agency guidelines for systematic declassification review. The Director shall require any regulation or guideline to be changed if it is not consistent with this Order or implementing directives. Any such decision by the Director may be appealed to the National Security Council. The agency regulation or guideline shall remain in effect until the appeal is decided or until one year from the date of the Director's decision, whichever occurs first.

(g) exercise case-by-case classification authority in accordance with Section 1-205 and review requests for original classification authority from agencies or officials not granted original classification authority under Section 1-2 of this Order; and

(h) have the authority to conduct on-site reviews of the information security program of each agency that handles classified information and to require of each agency such reports, information, and other cooperation as necessary to fulfill his responsibilities. If such reports, inspection, or access to specific categories of classified information would pose an exceptional national security risk, the affected agency head may deny access. The Director may appeal denials to the National Security Council. The denial of access shall remain in effect until the appeal is decided or until one year from the date of the denial, whichever occurs first.

5-3. Interagency Information Security Committee

5-301. There is established an Interagency Information Security Committee which shall be chaired by the Director and shall be comprised of representatives of the Secretaries of State, Defense, Treasury, and Energy, the Attorney General, the Director of Central Intelligence, the National Security Council, the Domestic Policy Staff, and the Archivist of the United States.

5-302. Representatives of other agencies may be invited to meet with the Committee on matters of particular interest to those agencies.

5-303. The Committee shall meet at the call of the Chairman or at the request of a member agency and shall advise the Chairman on implementation of this order.

5-4. General Responsibilities

5-401. A copy of any information security regulation and a copy of any guideline for systematic declassification review which has been adopted pursuant to this Order or implementing directives, shall be submitted to the Information Security Oversight Office. To the extent practicable, such regulations and guidelines should be unclassified.

5-402. Unclassified regulations that establish agency information security policy and unclassified guidelines for systematic declassification review shall be published in the Federal Register.

5-403. Agencies with original classification authority shall promulgate guides for security classification that will facilitate the identification and uniform classification of information requiring protection under the provisions of this Order.

5-404. Agencies which originate or handle classified information shall:

(a) designate a senior agency official to conduct an active oversight program to ensure effective implementation of this Order;

(b) designate a senior agency official to chair an agency committee with authority to act on all suggestions and complaints with respect to the agency's administration of the information security program;

(c) establish a process to decide appeals from denials of declassification requests submitted pursuant to Section 3-5;

(d) establish a program to familiarize agency and other personnel who have access to classified information with the provisions of this Order and implementing directives. This program shall impress upon agency personnel their responsibility to exercise vigilance in complying with this Order. The program shall encourage agency personnel to challenge, through Mandatory Review and other appropriate procedures, those classification decisions they believe to be improper;

(e) promulgate guidelines for systematic review in accordance with Section 3-402;

(f) establish procedures to prevent unnecessary access to classified information, including procedures which require that a demonstrable need for access to classified information is established before initiating administrative clearance procedures, and which ensures that the number of people granted access to classified information is reduced to and maintained at the minimum number that is consistent with operational requirements and needs; and

(g) ensure that practices for safeguarding information are systematically reviewed and that those which are duplicative or unnecessary are eliminated.

5-405. Agencies shall submit to the Information Security Oversight Office such information or reports as the Director of the Office may find necessary to carry out the Office's responsibilities.

5-5. Administrative Sanctions

5-501. If the Information Security Oversight Office finds that a violation of this Order or any implementing directives may have occurred, it shall make a

report to the head of the agency concerned so that corrective steps may be taken.

5-502. Officers and employees of the United States Government shall be subject to appropriate administrative sanctions if they:

(a) knowingly and willfully classify or continue the classification of information in violation of this Order or any implementing directives; or

(b) knowingly, willfully and without authorization disclose information properly classified under this Order or prior Orders or compromise properly classified information through negligence; or

(c) knowingly and willfully violate any other provision of this Order or implementing directive.

5-503. Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, or other sanction in accordance with applicable law and agency regulations.

5-504. Agency heads shall ensure that appropriate and prompt corrective action is taken whenever a violation under Section 5-502 occurs. The Director of the Information Security Oversight Office shall be informed when such violations occur.

5-505. Agency heads shall report to the Attorney General evidence reflected in classified information of possible violations of Federal criminal law by an agency employee and of possible violations by any other person of those Federal criminal laws specified in guidelines adopted by the Attorney General.

SECTION 6. GENERAL PROVISIONS

6-1. DEFINITIONS

6-101. "Agency" has the meaning defined in 5 U.S.C. 552(e).

6-102. "Classified information" means information or material, herein collectively termed information, that is owned by, produced for or by, or under the control of, the United States Government, and that has been determined pursuant to this Order or prior Orders to require protection against unauthorized disclosure, and that is so designated.

6-103. "Foreign government information" means information that has been provided to the United States in confidence by, or produced by the United States pursuant to a written joint arrangement requiring confidentiality with, a foreign government or international organization of governments.

6-104. "National security" means the national defense and foreign relations of the United States.

6-105. "Declassification event" means an event which would eliminate the need for continued classification.

6-2. GENERAL

6-201. Nothing in this Order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended [see Short Title note set out under section 2011 of Title 42, The Public Health and Welfare]. "Restricted Data" and information designated as "Formerly Restricted Data" shall be handled, protected, classified, downgraded, and declassified in conformity with the provisions of the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto.

6-202. The Attorney General, upon request by the head of an agency, his duly designated representative, or the Director of the Information Security Oversight Office, shall personally or through authorized representatives of the Department of Justice render an interpretation of this Order with respect to any question arising in the course of its administration.

6-203. Executive Order No. 11652 of March 8, 1972, as amended by Executive Order No. 11714 of April 24, 1973, and as further amended by Executive Order No. 11862 of June 11, 1975, [set out under this section], and the National Security Council Directive of May 17, 1972 (3 CFR 1085 (1971-75 Comp.)) [set out under this section] are revoked.

6-204. This Order shall become effective on December 1, 1978, except that the functions of the Information Security Oversight Office specified in Sections 5-202(d) and 5-202(f) shall be effective immediately and shall be performed in the interim by the Interagency Classification Review Committee established pursuant to Executive Order No. 11652.

JIMMY CARTER.

DIRECTOR OF THE WHITE HOUSE MILITARY OFFICE DESIGNATED TO CLASSIFY NATIONAL SECURITY INFORMATION

Pursuant to the provisions of Section 1-201 of Executive Order 12065 of June 28, 1978, entitled "National Security Information," I hereby designate the Director of the White House Military Office to classify information originally as "Top Secret."

This Order shall be published in the Federal Register.

JIMMY CARTER.

EXECUTIVE OFFICE OFFICIALS DESIGNATED TO CLASSIFY NATIONAL SECURITY INFORMATION

Pursuant to the provisions of Section 1-201 of Executive Order 12065 of June 28, 1978, entitled "National Security Information" [set out as a note above], I hereby designate the following officials within the Executive Office of the President to originally classify information as "Top Secret".

The Vice President

The Assistant to the President for National Security Affairs

The Director, Office of Management and Budget

The Director, Office of Science and Technology Policy

The Special Representative for Trade Negotiations

The Chairman, Intelligence Oversight Board

Pursuant to the provisions of Section 1-202 of said Order, I designate the Chairman of the Council of Economic Advisers and the President's Personal Representative for Micronesian Status Negotiations to originally classify information as "Secret".

Any delegation of this authority shall be in accordance with Section 1-204 of the Order.

This Order shall be published in the Federal Register.

JIMMY CARTER.

§ 403. Central Intelligence Agency

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

EXECUTIVE ORDER NO. 11460

Ex. Ord. No. 11460, Mar. 20, 1969, 34 F.R. 5535, which established the President's Foreign Intelligence Advisory Board, was revoked by Ex. Ord. No. 11984, May 4, 1977, 42 F.R. 23129, set out as a note below.

EX. ORD. NO. 11984. ABOLITION OF PRESIDENT'S FOREIGN INTELLIGENCE ADVISORY BOARD

Ex. Ord. No. 11984, May 4, 1977, 42 F.R. 23129, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in order to abolish the President's Foreign Intelligence Advisory Board, Executive Order No. 11460 of March 20, 1969, is hereby revoked.

JIMMY CARTER.

EX. ORD. NO. 12023. CONFORMING THE CENTRAL INTELLIGENCE AGENCY AND CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEMS

Ex. Ord. No. 12023, Dec. 1, 1977, 42 F.R. 61443, provided:

By virtue of the authority vested in me by Section 292 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (90 Stat. 2472; 50 U.S.C. 403 note), and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. The Director of Central Intelligence, hereafter referred to as the Director, shall maintain the Central Intelligence Agency Retirement and Disability System and the Central Intelligence Agency Retirement and Disability Fund, hereafter referred to as the Fund, in accordance with the following principles:

(a) None of the moneys mentioned in the Central Intelligence Agency Retirement Act of 1964 for Certain Employees, as amended (78 Stat. 1043, as amended; 50 U.S.C. 403 note), shall be assignable, either in law or equity, except under the provisions of subsection (b) of this Section, or subject to execution, levy, attachment, garnishment, or other legal process, except as otherwise may be provided by Federal laws.

(b) An individual entitled to an annuity from the Fund may make allotments or assignments of amounts of such annuity for such purposes as the Director in his sole discretion considers appropriate.

(c) No payment shall be made from the Fund unless an application for benefits based on the service of the participant is received by the Director before the one hundred and fifteenth anniversary of the participant's birth.

(d) Notwithstanding the provisions of subsection (c) of this Section, after the death of a participant or annuitant, no benefit based on the service of such person shall be paid from the Fund unless an application therefor is received by the Director within 30 years after the death or other event which gives rise to title to benefit.

(e) Sums deducted from salaries pursuant to Section 273 of the Central Intelligence Agency Retirement Act of 1964 for Certain Employees (78 Stat. 1053; 50 U.S.C. 403 note) shall be deposited in the Treasury of the United States to the credit of the Fund.

SEC. 2. The provisions of this Order are effective as follows:

(a) The provisions of Sections 1(a) and 1(b) are effective as of December 23, 1975.

(b) The provisions of Sections 1(c) and 1(d) are effective as of December 31, 1975.

(c) The provisions of Section 1(e) are effective as of October 1, 1976 and shall apply to annuitants serving in appointed positions on and after that date.

SEC. 3. The Director of Central Intelligence is authorized to prescribe such regulations as are necessary to carry out the provisions of this Order.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 403g of this title; title 5 section 2305; title 42 section 2162.

§ 403a. Definitions relating to Central Intelligence Agency

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403e, 403f of this title; title 5 sections 2305, 5373.

§ 403b. Seal of office of Central Intelligence Agency

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403a, 403e, 403f of this title; title 5 sections 2305, 5373.

§ 403c. Procurement authority of Central Intelligence Agency

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403a, 403e, 403f of this title; title 5 sections 2305, 5373.

§ 403e. Central Intelligence Agency; travel, allowance, and related expenses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403a, 403f of this title; title 5 sections 2305, 5373, 5727.

§ 403f. General authorities of Agency

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403a, 403e of this title; title 5 sections 2305, 5373.

§ 403g. Protection of nature of Agency's functions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403a, 403e, 403f of this title; title 5 sections 2305, 5373.

§ 403h. Admission of essential aliens; limitation on number

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403a, 403e, 403f of this title; title 5 sections 2305, 5373.

§ 403j. Central Intelligence Agency; appropriations; expenditures

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403a, 403e, 403f of this title; title 5 sections 2305, 5373, 5948.

§ 404. Emergency preparedness

DELEGATION OF FUNCTIONS

Functions of the Director of the Office of Defense Mobilization under this section, which were previously transferred to the President, were delegated to the Director of the Federal Emergency Management Agency by section 4-102 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 2251 of the Appendix to this title.

EX. ORD. NO. 10421. PHYSICAL SECURITY OF DEFENSE FACILITIES

Ex. Ord. No. 10421, Dec. 31, 1952, 18 F.R. 57, as amended by Ex. Ord. No. 10438, Mar. 13, 1953, 18 F.R. 1491; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

SECTION 1. As used in the following sections of this order:

(a) The word "facilities" means those Government-owned and privately-owned plants, mines, facilities (including buildings occupied in whole or in part by any Federal agency), materials, products, and processes, and those Government-provided and privately-provided services, which are of importance to defense mobilization, defense production, or the essential civilian economy and are located or provided in the continental United States or in the Territories or possessions of the United States: *Provided*, That the Director of the Federal Emergency Management Agency may, upon proper notice to affected Federal agencies, from time to time amend the foregoing definition of "facilities," with respect to any or all parts of this order, as he shall deem to be compatible with the purposes of this order.

[*See main edition for text of* (b)]

(c) The word "Director" means the Director of the Federal Emergency Management Agency.

[*See main edition for text of Secs. 2 to 5*]

SEC. 6. [*See main edition for text of* (a)]

(b) The Facilities Protection Board shall hereafter consist of one representative of each of the following agencies, namely, the Departments of Defense, Commerce, Interior, and Labor, the Atomic Energy Commission, the Federal Emergency Management Agency, and such other agencies as the Director may from time to time designate. Each such representative shall be designated by the head of the agency he is to represent. Each person who is now a member of the Board may continue as a member without the necessity of redesignation by reason of this order. The Director of the Federal Emergency Management Agency shall from time to time designate from among the members of the Board a Chairman of the Facilities Protection Board.

[*See main edition for text of* (c)]

SEC. 7. [*See main edition for text of* (a)]

(b) This order shall not be deemed to govern activities with respect to the post-attack immediately essential emergency repair or restoration of damaged vital facilities (64 Stat. 1247; 50 U.S.C. App. 2252(b)), except that the Federal Emergency Management Agency and the Director shall effect appropriate coordination of the said activities and functions carried out under this order.

[*See main edition for text of* (c) *to* (*f*)]

§ 405. Advisory Committees; appointment; compensation of part-time personnel; applicability of other laws

DELEGATION OF FUNCTIONS

Functions of the Director of the Office of Defense Mobilization under this section, which were previously transferred to the President, were delegated to the Director of the Federal Emergency Management Agency by section 4-102 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 2251 of the Appendix to this title.

CHAPTER 21—ABACA PRODUCTION

§ 541. Congressional declaration of policy

REFERENCES IN TEXT

The Strategic and Critical Materials Stock Piling Act, referred to in text, is act June 7, 1939, ch. 190, as revised generally by Pub. L. 96-41, § 2, July 30, 1979, 93 Stat. 319, which is classified generally to subchapter III (§ 98 et seq.) of chapter 5 of this title. For complete classification of this Act to the Code, see section 98 of this title and Tables.

§ 542. Production program

REFERENCES IN TEXT

The Strategic and Critical Materials Stock Piling Act, referred to in subsec. (c), is act June 7, 1939, ch. 190, as revised generally by Pub. L. 96-41, § 2, July 30, 1979, 93 Stat. 319, which is classified generally to subchapter III (§ 98 et seq.) of chapter 5 of this title. For complete classification of this Act to the Code, see section 98 of this title and Tables.

CHAPTER 23—INTERNAL SECURITY

SUBCHAPTER III—PERSONNEL SECURITY PROCEDURES IN NATIONAL SECURITY AGENCY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 5 section 2305.

§ 833. Termination of employment

[*See main edition for text of* (a)]

(b) Employment in other departments or agencies

Termination of employment under this section shall not affect the right of the officer or employee involved to seek or accept employment with any other department or agency of the United States if he is declared eligible for such employment by the Director of the Office of Personnel Management.

(c) Delegation of authority; limitation

Notwithstanding section 133(d) of title 10, only the Deputy Secretary of Defense and the Director of the National Security Agency may be delegated any authority vested in the Secretary of Defense by subsection (a) of this section.

(As amended Oct. 21, 1977, Pub. L. 95-140, § 3(c), 91 Stat. 1173; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-140 substituted "Deputy Secretary" for "Deputy Secretaries".

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management," was substituted for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

CHAPTER 29—NATIONAL DEFENSE CONTRACTS

CROSS REFERENCES

Applicability of chapter to Northeast Corridor Improvement Program, see section 101 of Pub. L. 95-335, set out as a note under section 851 of Title 45, Railroads.

§ 1431. Authorization; official approval; Congressional action; notification of Committees of certain proposed obligations, resolution of disapproval, continuity of session, computation of period

EX. ORD. NO. 10789. CONTRACTING AUTHORITY OF GOVERNMENT AGENCIES IN CONNECTION WITH NATIONAL DEFENSE FUNCTIONS

Ex. Ord. No. 10789, Nov. 14, 1958, 23 F.R. 8897, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 11382, Nov. 28, 1967, 32 F.R. 16247; Ex. Ord. No. 11610, July 22, 1971, 36 F.R. 13755; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

[*See main edition for text of opening par. and Part I*]

PART II—EXTENSION OF PROVISIONS OF PARAGRAPHS 1 TO 14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following-named agencies is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

Department of the Treasury.
Department of the Interior.
Department of Agriculture.
Department of Commerce.
Department of Transportation.
Atomic Energy Commission.
General Services Administration.
National Aeronautics and Space Administration.
Tennessee Valley Authority.
Government Printing Office.
The Federal Emergency Management Agency.

[*See main edition for text of 22 to 24*]

CROSS REFERENCE

Certification by company officials of requests for relief, see note under section 2304 of Title 10, Armed Forces.

CHAPTER 32—CHEMICAL AND BIOLOGICAL WARFARE PROGRAM

Sec.
1520. Use of human subjects for testing of chemical or biological agents by Department of Defense; accounting to Congressional committees with respect to experiments and studies notification of local civilian officials [New].

§ 1512. Transportation, open air testing, and disposal; Presidential determination; report to Congress; notice to Congress and State Governors

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 1520. Use of human subjects for testing of chemical or biological agents by Department of Defense; accounting to congressional committees with respect to experiments and studies; notification of local civilian officials

(a)(1) The Secretary of Defense shall supply the Committees on Armed Services of the Senate and House of Representatives, not later than October 1 of each year, a full accounting of all experiments and studies conducted by the Department of Defense in the preceding twelve-month period, whether directly or under contract, which involve the use of human subjects for the testing of chemical or biological agents.

(2) Not later than thirty days after final approval within the Department of Defense of plans for any experiment or study to be conducted by the Department of Defense, whether directly or under contract, involving the use of human subjects for the testing of chemical or biological agents, the Secretary of Defense shall supply the Committees on Armed Services of the Senate and House of Representatives with a full accounting of such plans for such experiment or study, and such experiment or study may then be conducted only after the expiration of the thirty-day period beginning on the date such accounting is received by such committees.

(b)(1) The Secretary of Defense may not conduct any test or experiment involving the use of any chemical or biological agent on civilian populations unless local civilian officials in the area in which the test or experiment is to be conducted are notified in advance of such test or experiment, and such test or experiment may then be conducted only after the expiration of the thirty-day period beginning on the date of such notification.

(2) Paragraph (1) shall apply to tests and experiments conducted by Department of Defense personnel and tests and experiments conducted on behalf of the Department of Defense by contractors.

(Pub. L. 95-79, title VIII, § 808, July 30, 1977, 91 Stat. 334.)

CODIFICATION

Section was not enacted as part of Pub. L. 91-121, title IV, § 409, Nov. 19, 1969, 83 Stat. 209, which comprises this chapter.

CHAPTER 33—WAR POWERS RESOLUTION

§ 1544. Congressional action

(a) Transmittal of report and referral to Congressional Committees; joint request for convening Congress

Each report submitted pursuant to section 1543(a)(1) of this title shall be transmitted to the Speaker of the House of Representatives and to the President pro tempore of the Senate on the same calendar day. Each report so transmitted shall be referred to the Committee on Foreign Affairs of the House of Representatives and to the Committee on Foreign Relations of the Senate for appropriate action. If, when the report is transmitted, the Congress has adjourned sine die or has adjourned for any period in excess of three calendar days, the Speaker of the House of Representatives and the President pro tempore of the Senate, if they deem it advisable (or if petitioned by at least 30 percent of the membership of their respective Houses) shall jointly request the President to convene Congress in order that it may consider the report and take appropriate action pursuant to this section.

[*See main edition for text of* (b) *and* (c)]

(As amended H. Res. 89, Feb. 5, 1979.)

CHANGE OF NAME

The name of the Committee on Foreign Affairs of the House of Representatives was changed to Committee on International Relations on Mar. 19, 1975, by House Resolution 163, 94th Congress. The name was changed back to Committee on Foreign Affairs on Feb. 5, 1979, by House Resolution 89, 96th Congress.

§ 1545. Congressional priority procedures for joint resolution or bill

(a) Time requirement; referral to Congressional committee; single report

Any joint resolution or bill introduced pursuant to section 1544(b) of this title at least thirty

calendar days before the expiration of the sixty-day period specified in such section shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and such committee shall report one such joint resolution or bill, together with its recommendations, not later than twenty-four calendar days before the expiration of the sixty-day period specified in such section, unless such House shall otherwise determine by the yeas and nays.

[*See main edition for text of* (b) *to* (d)]

(As amended H. Res. 89, Feb. 5, 1979.)

CHANGE OF NAME

The name of the Committee on Foreign Affairs of the House of Representatives was changed to Committee on International Relations on Mar. 19, 1975, by House Resolution 163, 94th Congress. The name was changed back to Committee on Foreign Affairs on Feb. 5, 1979, by House Resolution 89, 96th Congress.

§ 1546. Congressional priority procedures for concurrent resolution

(a) Referral to Congressional committee; single report

Any concurrent resolution introduced pursuant to section 1544(c) of this title shall be referred to the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate, as the case may be, and one such concurrent resolution shall be reported out by such committee together with its recommendations within fifteen calendar days, unless such House shall otherwise determine by the yeas and nays.

[*See main edition for text of* (b) *to* (d)]

(As amended H. Res. 89, Feb. 5, 1979.)

CHANGE OF NAME

The name of the Committee on Foreign Affairs of the House of Representatives was changed to Committee on International Relations on Mar. 19, 1975, by House Resolution 163, 94th Congress. The name was changed back to Committee on Foreign Affairs on Feb. 5, 1979, by House Resolution 89, 96th Congress.

CHAPTER 34—NATIONAL EMERGENCIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1706 of this title.

SUBCHAPTER I—TERMINATING EXISTING DECLARED EMERGENCIES

§ 1601. Termination of existing declared emergencies

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1706 of this title.

SUBCHAPTER II—DECLARATIONS OF FUTURE NATIONAL EMERGENCIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1706 of this title; title 42 section 8374.

§ 1622. National emergencies

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1706 of this title.

SUBCHAPTER IV—ACCOUNTABILITY AND REPORTING REQUIREMENTS OF THE PRESIDENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1703 of this title.

SUBCHAPTER V—APPLICATION TO POWERS AND AUTHORITIES OF OTHER PROVISIONS OF LAW AND ACTIONS TAKEN THEREUNDER

§ 1651. Other laws, powers and authorities conferred thereby, and actions taken thereunder; Congressional studies

(a) The provisions of this chapter shall not apply to the following provisions of law, the powers and authorities conferred thereby, and actions taken thereunder:

(1) Repealed. Pub. L. 95-223, title I, § 101(d), Dec. 28, 1977, 91 Stat. 1625.

[*See main edition for text of* (2) *to* (8); (b)]

(As amended Pub. L. 95-223, title I, § 101(d), Dec. 28, 1977, 91 Stat. 1625.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-223 struck out subsec. (a)(1), which had read: "Section 5(b) of the Act of October 6, 1917, as amended (12 U.S.C. 95a; 50 U.S.C. App. 5(b));".

CHAPTER 35—INTERNATIONAL EMERGENCY ECONOMIC POWERS [NEW]

Sec.
1701. Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities.
1702. Presidential authorities.
1703. Consultation and reports.
(a) Consultation with Congress.
(b) Report to Congress upon exercise of Presidential authorities.
(c) Periodic follow-up reports.
(d) Supplemental requirements.
1704. Authority to issue regulations.
1705. Penalties.
1706. Savings provisions.
(a) Termination of national emergencies pursuant to National Emergencies Act.
(b) Congressional termination of national emergencies by concurrent resolution.
(c) Supplemental savings provisions; supersedure of inconsistent provisions.
(d) Periodic reports to Congress.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2405 of the Appendix to this title; title 12 sections 3409, 3413; title 19 section 2581.

§ 1701. Unusual and extraordinary threat; declaration of national emergency; exercise of Presidential authorities

(a) Any authority granted to the President by section 1702 of this title may be exercised to

deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States, if the President declares a national emergency with respect to such threat.

(b) The authorities granted to the President by section 1702 of this title may only be exercised to deal with an unusual and extraordinary threat with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat.

(Pub. L. 95–223, title II, § 202, Dec. 28, 1977, 91 Stat. 1626.)

SHORT TITLE

Section 201 of Pub. L. 95–223 provided that: "This title [enacting this chapter] may be cited as the 'International Emergency Economic Powers Act'."

SEPARABILITY OF PROVISIONS

Section 208 of Pub. L. 95–223 provided that: "If any provision of this Act [this chapter] is held invalid, the remainder of the Act shall not be affected thereby."

EX. ORD. NO. 12170. BLOCKING IRANIAN GOVERNMENT PROPERTY

Ex. Ord. No. 12170, Nov. 14, 1979, 44 F.R. 65729, provided:

Pursuant to the authority vested in me as President by the Constitution and laws of the United States including the International Emergency Economic Powers Act, 50 U.S.C.A. sec. 1701 et seq., the National Emergencies Act, 50 U.S.C. sec. 1601 et seq., and 3 U.S.C. sec. 301,

I, JIMMY CARTER, President of the United States, find that the situation in Iran constitutes an unusual and extraordinary threat to the national security, foreign policy and economy of the United States and hereby declare a national emergency to deal with that threat.

I hereby order blocked all property and interests in property of the Government of Iran, its instrumentalities and controlled entities and the Central Bank of Iran which are or become subject to the jurisdiction of the United States or which are in or come within the possession or control of persons subject to the jurisdiction of the United States.

The Secretary of the Treasury is authorized to employ all powers granted to me by the International Emergency Economic Powers Act [this chapter] to carry out the provisions of this order.

This order is effective immediately and shall be transmitted to the Congress and published in the Federal Register.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1702 of this title.

§ 1702. Presidential authorities

(a)(1) At the times and to the extent specified in section 1701 of this title, the President may, under such regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit—

(i) any transactions in foreign exchange,

(ii) transfers of credit or payments between, by, through, or to any banking institution, to the extent that such transfers or payments involve any interest of any foreign country or a national thereof,

(iii) the importing or exporting of currency or securities; and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest;

by any person, or with respect to any property, subject to the jurisdiction of the United States.

(2) In exercising the authorities granted by paragraph (1), the President may require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in paragraph (1) either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of such paragraph. In any case in which a report by a person could be required under this paragraph, the President may require the production of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

(3) Compliance with any regulation, instruction, or direction issued under this chapter shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same. No person shall be held liable in any court for or with respect to anything done or omitted in good faith in connection with the administration of, or pursuant to and in reliance on, this chapter, or any regulation, instruction, or direction issued under this chapter.

(b) The authority granted to the President by this section does not include the authority to regulate or prohibit, directly or indirectly—

(1) any postal, telegraphic, telephonic, or other personal communication, which does not involve a transfer of anything of value; or

(2) donations, by persons subject to the jurisdiction of the United States, of articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, except to the extent that the President determines that such donations (A) would seriously impair his ability to deal with any national emergency declared under section 1701 of this title, (B) are in response to coercion against the proposed recipient or donor, or (C) would endanger Armed Forces of the United States which are engaged in hostilities or are in a situation where imminent involvement in hostilities is clearly indicated by the circumstances.

(Pub. L. 95–223, title II, § 203, Dec. 28, 1977, 91 Stat. 1626.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1701 of this title.

§ 1703. Consultation and reports

(a) Consultation with Congress

The President, in every possible instance, shall consult with the Congress before exercising any of the authorities granted by this chapter and shall consult regularly with the Congress so long as such authorities are exercised.

(b) Report to Congress upon exercise of Presidential authorities

Whenever the President exercises any of the authorities granted by this chapter, he shall immediately transmit to the Congress a report specifying—

(1) the circumstances which necessitate such exercise of authority;

(2) why the President believes those circumstances constitute an unusual and extraordinary threat, which has its source in whole or substantial part outside the United States, to the national security, foreign policy, or economy of the United States;

(3) the authorities to be exercised and the actions to be taken in the exercise of those authorities to deal with those circumstances;

(4) why the President believes such actions are necessary to deal with those circumstances; and

(5) any foreign countries with respect to which such actions are to be taken and why such actions are to be taken with respect to those countries.

(c) Periodic follow-up reports

At least once during each succeeding six-month period after transmitting a report pursuant to subsection (b) of this section with respect to an exercise of authorities under this chapter, the President shall report to the Congress with respect to the actions taken, since the last such report, in the exercise of such authorities, and with respect to any changes which have occurred concerning any information previously furnished pursuant to paragraphs (1) through (5) of subsection (b) of this section.

(d) Supplemental requirements

The requirements of this section are supplemental to those contained in title IV of the National Emergencies Act [50 U.S.C. 1641].

(Pub. L. 95-223, title II, § 204, Dec. 28, 1977, 91 Stat. 1627.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsec. (d), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, as amended. Title IV of the National Emergencies Act enacted subchapter IV (§ 1641) of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

§ 1704. Authority to issue regulations

The President may issue such regulations, including regulations prescribing definitions, as may be necessary for the exercise of the authorities granted by this chapter.

(Pub. L. 95-223, title II, § 205, Dec. 28, 1977, 91 Stat. 1628.)

§ 1705. Penalties

(a) A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this chapter.

(b) Whoever willfully violates any license, order, or regulation issued under this chapter shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

(Pub. L. 95-223, title II, § 206, Dec. 28, 1977, 91 Stat. 1628.)

§ 1706. Savings provisions

(a) Termination of national emergencies pursuant to National Emergencies Act

(1) Except as provided in subsection (b) of this section, notwithstanding the termination pursuant to the National Emergencies Act [50 U.S.C. 1601 et seq.] of a national emergency declared for purposes of this chapter, any authorities granted by this chapter, which are exercised on the date of such termination on the basis of such national emergency to prohibit transactions involving property in which a foreign country or national thereof has any interest, may continue to be so exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(2) Notwithstanding the termination of the authorities described in section 101(b) of this Act, any such authorities, which are exercised with respect to a country on the date of such termination to prohibit transactions involving any property in which such country or any national thereof has any interest, may continue to be exercised to prohibit transactions involving that property if the President determines that the continuation of such prohibition with respect to that property is necessary on account of claims involving such country or its nationals.

(b) Congressional termination of national emergencies by concurrent resolution

The authorities described in subsection (a)(1) of this section may not continue to be exercised under this section if the national emergency is terminated by the Congress by concurrent resolution pursuant to section 202 of the National Emergencies Act [50 U.S.C. 1622] and if the Congress specifies in such concurrent resolution that such authorities may not continue to be exercised under this section.

(c) Supplemental savings provisions; supersedure of inconsistent provisions

(1) The provisions of this section are supplemental to the savings provisions of paragraphs (1), (2), and (3) of section 101(a) [50 U.S.C.

1601(a)(1), (2), (3)] and of paragraphs (A), (B), and (C) of section 202(a) [50 U.S.C. 1622(a)(A), (B), and (C)] of the National Emergencies Act.

(2) The provisions of this section supersede the termination provisions of section 101(a) [50 U.S.C. 1601(a)] and of title II [50 U.S.C. 1621 et seq.] of the National Emergencies Act to the extent that the provisions of this section are inconsistent with these provisions.

(d) Periodic reports to Congress

If the President uses the authority of this section to continue prohibitions on transactions involving foreign property interests, he shall report to the Congress every six months on the use of such authority.

(Pub. L. 95-223, title II, § 207, Dec. 28, 1977, 91 Stat. 1628.)

REFERENCES IN TEXT

The National Emergencies Act, referred to in subsecs. (a)(1) and (c)(2), is Pub. L. 94-412, Sept. 14, 1976, 90 Stat. 1255, as amended, which is classified principally to chapter 34 (§ 1601 et seq.) of this title. Title II of the National Emergencies Act is classified generally to subchapter II (§ 1621 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Section 101(b) of this Act, referred to in subsec. (a)(2), is section 101(b) of Pub. L. 95-223, which is set out as a note under section 5 of the Appendix to this title.

CHAPTER 36—FOREIGN INTELLIGENCE SURVEILLANCE [NEW]

Sec.
1801. Definitions.
1802. Electronic surveillance authorization without court order; certification by Attorney General; reports to congressional committees; transmittal under seal; duties and compensation of communication common carrier; applications; jurisdiction of court.
1803. Designation of judges.
(a) Court to hear applications and grant orders; record of denial; transmittal to court of review.
(b) Court of review; record, transmittal to Supreme Court.
(c) Expeditious conduct of proceedings; security measures for maintenance of records.
(d) Tenure.
1804. Applications for court orders.
(a) Submission by Federal officer; approval of Attorney General; contents.
(b) Exclusion of certain information respecting foreign power targets.
(c) Additional affidavits or certifications.
(d) Additional information.
1805. Issuance or order.
(a) Necessary findings.
(b) Specifications and directions of orders.
(c) Exclusion of certain information respecting foreign power targets.
(d) Duration of order; extensions; review of circumstances under which information was acquired, retained or disseminated.
(e) Emergency orders.
(f) Testing of electronic equipment; discovering unauthorized electronic surveillance; training of intelligence personnel.
(g) Retention of certifications, applications and orders.
1806. Use of information.
(a) Compliance with minimization procedures; privileged communications; lawful purposes.
(b) Statement for disclosure.
(c) Notification by United States.
(d) Notification by States or political subdivisions.
(e) Motion to suppress.
(f) In camera and ex parte review by district court.
(g) Suppression of evidence; denial of motion.
(h) Finality of orders.
(i) Destruction of unintentionally acquired information.
(j) Notification of emergency employment of electronic surveillance; contents; postponement, suspension or elimination.
1807. Report to Administrative Office of the United States Court and to Congress.
1808. Report of Attorney General to congressional committees; limitation on authority or responsibility of information gathering activities of congressional committees; report of congressional committees to Congress.
1809. Criminal sanctions.
(a) Prohibited activities.
(b) Defense.
(c) Penalties.
(d) Federal jurisdiction.
1810. Civil liability.
1811. Authorization during time of war.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 18 section 2511.

§ 1801. Definitions

As used in this chapter:

(a) "Foreign power" means—

(1) a foreign government or any component thereof, whether or not recognized by the United States;

(2) a faction of a foreign nation or nations, not substantially composed of United States persons;

(3) an entity that is openly acknowledged by a foreign government or governments to be directed and controlled by such foreign government or governments;

(4) a group engaged in international terrorism or activities in preparation therefor;

(5) a foreign-based political organization, not substantially composed of United States persons; or

(6) an entity that is directed and controlled by a foreign government or governments.

(b) "Agent of a foreign power" means—

(1) any person other than a United States person, who—

(A) acts in the United States as an officer or employee of a foreign power, or as a member of a foreign power as defined in subsection (a)(4) of this section;

(B) acts for or on behalf of a foreign power which engages in clandestine intelligence activities in the United States contrary to the interests of the United States, when the circumstances of such person's presence in the United States in-

dicate that such person may engage in such activities in the United States, or when such person knowingly aids or abets any person in the conduct of such activities or knowingly conspires with any person to engage in such activities; or

(2) any person who—

(A) knowingly engages in clandestine intelligence gathering activities for or on behalf of a foreign power, which activities involve or may involve a violation of the criminal statutes of the United States;

(B) pursuant to the direction of an intelligence service or network of a foreign power, knowingly engages in any other clandestine intelligence activities for or on behalf of such foreign power, which activities involve or are about to involve a violation of the criminal statutes of the United States;

(C) knowingly engages in sabotage or international terrorism, or activities that are in preparation therefor, for or on behalf of a foreign power; or

(D) knowingly aids or abets any person in the conduct of activities described in subparagraph (A), (B), or (C) or knowingly conspires with any person to engage in activities described in subparagraph (A), (B), or (C).

(c) "International terrorism" means activities that—

(1) involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any State, or that would be a criminal violation if committed within the jurisdiction of the United States or any State;

(2) appear to be intended—

(A) to intimidate or coerce a civilian population;

(B) to influence the policy of a government by intimidation or coercion; or

(C) to affect the conduct of a government by assassination or kidnapping; and

(3) occur totally outside the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to coerce or intimidate, or the locale in which their perpetrators operate or seek asylum.

(d) "Sabotage" means activities that involve a violation of chapter 105 of title 18, or that would involve such a violation if committed against the United States.

(e) "Foreign intelligence information" means—

(1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against—

(A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;

(B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or

(C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or

(2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to—

(A) the national defense or the security of the United States; or

(B) the conduct of the foreign affairs of the United States.

(f) "Electronic surveillance" means—

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in the United States;

(3) the intentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States; or

(4) the installation or use of an electronic, mechanical, or other surveillance device in the United States for monitoring to acquire information, other than from a wire or radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes.

(g) "Attorney General" means the Attorney General of the United States (or Acting Attorney General) or the Deputy Attorney General.

(h) "Minimization procedures", with respect to electronic surveillance, means—

(1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;

(2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e)(1) of this section, shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance;

(3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and

(4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 1802(a) of this title, procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than twenty-four hours unless a court order under section 1805 of this title is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

(i) "United States person" means a citizen of the United States, an alien lawfully admitted for permanent residence (as defined in section 1101(a)(20) of title 8), an unincorporated association a substantial number of members of which are citizens of the United States or aliens lawfully admitted for permanent residence, or a corporation which is incorporated in the United States, but does not include a corporation or an association which is a foreign power, as defined in subsection (a)(1), (2), or (3) of this section.

(j) "United States", when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

(k) "Aggrieved person" means a person who is the target of an electronic surveillance or any other person whose communications or activities were subject to electronic surveillance.

(*l*) "Wire communication" means any communication while it is being carried by a wire, cable, or other like connection furnished or operated by any person engaged as a common carrier in providing or operating such facilities for the transmission of interstate or foreign communications.

(m) "Person" means any individual, including any officer or employee of the Federal Government, or any group, entity, association, corporation, or foreign power.

(n) "Contents", when used with respect to a communication, includes any information concerning the identity of the parties to such communication or the existence, substance, purport, or meaning of that communication.

(*o*) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(Pub. L. 95–511, title I, § 101, Oct. 25, 1978, 92 Stat. 1783.)

EFFECTIVE DATE; EXCEPTION

Section 301 of Pub. L. 95-511 provided that: "The provisions of this Act [enacting this chapter, amending sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacting provision set out as a note below] and the amendments made hereby shall become effective upon the date of enactment of this Act [Oct. 25, 1978], except that any electronic surveillance approved by the Attorney General to gather foreign intelligence information shall not be deemed unlawful for failure to follow the procedures of this Act, if that surveillance is terminated or an order approving that surveillance is obtained under title I of this Act [this chapter] within ninety days following the designation of the first judge pursuant to section 103 of this Act [section 1803 of this title]."

SHORT TITLE

Section 1 of Pub. L. 95-511 provided: "That this Act enacting this chapter, amending sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacting provision set out as a note above] may be cited as the 'Foreign Intelligence Surveillance Act of 1978'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1802, 1804, 1805, 1810 of this title; title 18 section 2511.

§ 1802. Electronic surveillance authorization without court order; certification by Attorney General; reports to congressional committees; transmittal under seal; duties and compensation of communication common carrier; applications; jurisdiction of court

(a)(1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this chapter to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that—

(A) the electronic surveillance is solely directed at—

(i) the acquisition of the contents of communications transmitted by means of communications used exclusively between or among foreign powers, as defined in section 1801(a)(1), (2), or (3) of this title; or

(ii) the acquisition of technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title;

(B) there is no substantial likelihood that the surveillance will acquire the contents of any communication to which a United States person is a party; and

(C) the proposed minimization procedures with respect to such surveillance meet the definition of minimization procedures under section 1801(h) of this title; and

if the Attorney General reports such minimization procedures and any changes thereto to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence at least thirty days prior to their effective date, unless the Attorney General determines immediate action is required and notifies the committees immediately of such minimization procedures and the reason for their becoming effective immediately.

(2) An electronic surveillance authorized by this subsection may be conducted only in accordance with the Attorney General's certification and the minimization procedures adopted by him. The Attorney General shall assess com-

pliance with such procedures and shall report such assessments to the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence under the provisions of section 1808(a) of this title.

(3) The Attorney General shall immediately transmit under seal to the court established under section 1803(a) of this title a copy of his certification. Such certification shall be maintained under security measures established by the Chief Justice with the concurrence of the Attorney General, in consultation with the Director of Central Intelligence, and shall remain sealed unless—

(A) an application for a court order with respect to the surveillance is made under sections 1801(h)(4) and 1804 of this title; or

(B) the certification is necessary to determine the legality of the surveillance under section 1806(f) of this title.

(4) With respect to electronic surveillance authorized by this subsection, the Attorney General may direct a specified communication common carrier to—

(A) furnish all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier is providing its customers; and

(B) maintain under security procedures approved by the Attorney General and the Director of Central Intelligence any records concerning the surveillance or the aid furnished which such carrier wishes to retain.

The Government shall compensate, at the prevailing rate, such carrier for furnishing such aid.

(b) Applications for a court order under this chapter are authorized if the President has, by written authorization, empowered the Attorney General to approve applications to the court having jurisdiction under section 1803 of this title, and a judge to whom an application is made may, notwithstanding any other law, grant an order, in conformity with section 1805 of this title, approving electronic surveillance of a foreign power or an agent of a foreign power for the purpose of obtaining foreign intelligence information, except that the court shall not have jurisdiction to grant any order approving electronic surveillance directed solely as described in paragraph (1)(A) of subsection (a) of this section unless such surveillance may involve the acquisition of communications of any United States person.

(Pub. L. 95-511, title I, § 102, Oct. 25, 1978, 92 Stat. 1786.)

EX. ORD. NO. 12139. EXERCISE OF CERTAIN AUTHORITY RESPECTING ELECTRONIC SURVEILLANCE

Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, provided:

By the authority vested in me as President by Sections 102 and 104 of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802 and 1804), in order to provide as set forth in that Act [this chapter] for the authorization of electronic surveillance for foreign intelligence purposes, it is hereby ordered as follows:

1-101. Pursuant to Section 102(a)(1) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1802(a)), the Attorney General is authorized to approve electronic surveillance to acquire foreign intelligence information without a court order, but only if the Attorney General makes the certifications required by that Section.

1-102. Pursuant to Section 102(b) of the Foreign Intelligence Act of 1978 (50 U.S.C. 1802(b)), the Attorney General is authorized to approve applications to the court having jurisdiction under Section 103 of that Act [50 U.S.C. 1803] to obtain orders for electronic surveillance for the purpose of obtaining foreign intelligence information.

1-103. Pursuant to Section 104(a)(7) of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1804(a)(7)), the following officials, each of whom is employed in the area of national security or defense, is designated to make the certifications required by Section 104(a)(7) of the Act in support of applications to conduct electronic surveillance:

(a) Secretary of State.
(b) Secretary of Defense.
(c) Director of Central Intelligence.
(d) Director of the Federal Bureau of Investigation.
(e) Deputy Secretary of State.
(f) Deputy Secretary of Defense.
(g) Deputy Director of Central Intelligence.

None of the above officials, nor anyone officially acting in that capacity, may exercise the authority to make the above certifications, unless that official has been appointed by the President with the advice and consent of the Senate.

1-104. Section 2-202 of Executive Order No. 12036 [set out as a note under section 401 of this title] is amended by inserting the following at the end of that section: "Any electronic surveillance, as defined in the Foreign Intelligence Surveillance Act of 1978, shall be conducted in accordance with that Act as well as this Order.".

1-105. Section 2-203 of Executive Order No. 12036 [set out as a note under section 401 of this title] is amended by inserting the following at the end of that section: "Any monitoring which constitutes electronic surveillance as defined in the Foreign Intelligence Surveillance Act of 1978 shall be conducted in accordance with that Act as well as this Order.".

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1801, 1805 of this title.

§ 1803. Designation of judges

(a) Court to hear applications and grant orders; record of denial; transmittal to court of review

The Chief Justice of the United States shall publicly designate seven district court judges from seven of the United States judicial circuits who shall constitute a court which shall have jurisdiction to hear applications for and grant orders approving electronic surveillance anywhere within the United States under the procedures set forth in this Act, except that no judge designated under this subsection shall hear the same application for electronic surveillance under this Act which has been denied previously by another judge designated under this subsection. If any judge so designated denies an application for an order authorizing electronic surveillance under this Act, such judge shall provide immediately for the record a written statement of each reason of his decision and, on motion of the United States, the record shall be transmitted, under seal, to the court of review established in subsection (b) of this section.

(b) Court of review; record, transmittal to Supreme Court

The Chief Justice shall publicly designate three judges, one of whom shall be publicly designated as the presiding judge, from the United States district courts or courts of appeals who together shall comprise a court of review which shall have jurisdiction to review the denial of any application made under this Act. If such court determines that the application was properly denied, the court shall immediately provide for the record a written statement of each reason for its decision and, on petition of the United States for a writ of certiorari, the record shall be transmitted under seal to the Supreme Court, which shall have jurisdiction to review such decision.

(c) Expeditious conduct of proceedings; security measures for maintenance of records

Proceedings under this Act shall be conducted as expeditiously as possible. The record of proceedings under this Act, including applications made and orders granted, shall be maintained under security measures established by the Chief Justice in consultation with the Attorney General and the Director of Central Intelligence.

(d) Tenure

Each judge designated under this section shall so serve for a maximum of seven years and shall not be eligible for redesignation, except that the judges first designated under subsection (a) of this section shall be designated for terms of from one to seven years so that one term expires each year, and that judges first designated under subsection (b) of this section shall be designated for terms of three, five, and seven years.

(Pub. L. 95-511, title I, § 103, Oct. 25, 1978, 92 Stat. 1788.)

REFERENCES IN TEXT

This Act, referred to in subsecs. (a), (b), and (c), means Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, known as the Foreign Intelligence Surveillance Act of 1978, which enacted this chapter, amended sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 1801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1802, 1804, 1805 of this title.

§ 1804. Applications for court orders

(a) Submission by Federal officer; approval of Attorney General; contents

Each application for an order approving electronic surveillance under this chapter shall be made by a Federal officer in writing upon oath or affirmation to a judge having jurisdiction under section 1803 of this title. Each application shall require the approval of the Attorney General based upon his finding that it satisfies the criteria and requirements of such application as set forth in this chapter. It shall include—

(1) the identity of the Federal officer making the application;

(2) the authority conferred on the Attorney General by the President of the United States and the approval of the Attorney General to make the application;

(3) the identity, if known, or a description of the target of the electronic surveillance;

(4) a statement of the facts and circumstances relied upon by the applicant to justify his belief that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(5) a statement of the proposed minimization procedures;

(6) a detailed description of the nature of the information sought and the type of communications or activities to be subjected to the surveillance;

(7) a certification or certifications by the Assistant to the President for National Security Affairs or an executive branch official or officials designated by the President from among those executive officers employed in the area of national security or defense and appointed by the President with the advice and consent of the Senate—

(A) that the certifying official deems the information sought to be foreign intelligence information;

(B) that the purpose of the surveillance is to obtain foreign intelligence information;

(C) that such information cannot reasonably be obtained by normal investigative techniques;

(D) that designates the type of foreign intelligence information being sought according to the categories described in section 1801(e) of this title; and

(E) including a statement of the basis for the certification that—

(i) the information sought is the type of foreign intelligence information designated; and

(ii) such information cannot reasonably be obtained by normal investigative techniques;

(8) a statement of the means by which the surveillance will be effected and a statement whether physical entry is required to effect the surveillance;

(9) a statement of the facts concerning all previous applications that have been made to any judge under this chapter involving any of the persons, facilities, or places specified in the application, and the action taken on each previous application;

(10) a statement of the period of time for which the electronic surveillance is required to be maintained, and if the nature of the intelligence gathering is such that the approval of the use of electronic surveillance under this chapter should not automatically terminate when the described type of information

has first been obtained, a description of facts supporting the belief that additional information of the same type will be obtained thereafter; and

(11) whenever more than one electronic, mechanical or other surveillance device is to be used with respect to a particular proposed electronic surveillance, the coverage of the devices involved and what minimization procedures apply to information acquired by each device.

(b) Exclusion of certain information respecting foreign power targets

Whenever the target of the electronic surveillance is a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title, and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the application need not contain the information required by paragraphs (6), (7)(E), (8), and (11) of subsection (a) of this section, but shall state whether physical entry is required to effect the surveillance and shall contain such information about the surveillance techniques and communications or other information concerning United States persons likely to be obtained as may be necessary to assess the proposed minimization procedures.

(c) Additional affidavits or certifications

The Attorney General may require any other affidavit or certification from any other officer in connection with the application.

(d) Additional information

The judge may require the applicant to furnish such other information as may be necessary to make the determinations required by section 1805 of this title.

(Pub. L. 95-511, title I, § 104, Oct. 25, 1978, 92 Stat. 1788.)

DESIGNATION OF CERTAIN OFFICIALS TO MAKE CERTIFICATIONS

For designation of certain officials to make certifications required by subsec. (a)(7) of this section, see Ex. Ord. No. 12139, May 23, 1979, 44 F.R. 30311, set out as a note under section 1802 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1802, 1805 of this title.

§ 1805. Issuance of order

(a) Necessary findings

Upon an application made pursuant to section 1804 of this title, the judge shall enter an ex parte order as requested or as modified approving the electronic surveillance if he finds that—

(1) the President has authorized the Attorney General to approve applications for electronic surveillance for foreign intelligence information;

(2) the application has been made by a Federal officer and approved by the Attorney General;

(3) on the basis of the facts submitted by the applicant there is probable cause to believe that—

(A) the target of the electronic surveillance is a foreign power or an agent of a foreign power: *Provided*, That no United States person may be considered a foreign power or an agent of a foreign power solely upon the basis of activities protected by the first amendment to the Constitution of the United States; and

(B) each of the facilities or places at which the electronic surveillance is directed is being used, or is about to be used, by a foreign power or an agent of a foreign power;

(4) the proposed minimization procedures meet the definition of minimization procedures under section 1804(h) of this title; and

(5) the application which has been filed contains all statements and certifications required by section 1804 of this title and, if the target is a United States person, the certification or certifications are not clearly erroneous on the basis of the statement made under section 1804(a)(7)(E) of this title and any other information furnished under section 1804(d) of this title.

(b) Specifications and directions of orders

An order approving an electronic surveillance under this section shall—

(1) specify—

(A) the identity, if known, or a description of the target of the electronic surveillance;

(B) the nature and location of each of the facilities or places at which the electronic surveillance will be directed;

(C) the type of information sought to be acquired and the type of communications or activities to be subjected to the surveillance;

(D) the means by which the electronic surveillance will be effected and whether physical entry will be used to effect the surveillance;

(E) the period of time during which the electronic surveillance is approved; and

(F) whenever more than one electronic, mechanical, or other surveillance device is to be used under the order, the authorized coverage of the devices involved and what minimization procedures shall apply to information subject to acquisition by each device; and

(2) direct—

(A) that the minimization procedures be followed;

(B) that, upon the request of the applicant, a specified communication or other common carrier, landlord, custodian, or other specified person furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the electronic surveillance in such a manner as will protect its secrecy and produce a minimum of interference with the services that such carrier, landlord, custodian, or other person is providing that target of electronic surveillance;

(C) that such carrier, landlord, custodian, or other person maintain under security procedures approved by the Attorney General and the Director of Central Intelli-

gence any records concerning the surveillance or the aid furnished that such person wishes to retain; and

(D) that the applicant compensate, at the prevailing rate, such carrier, landlord, custodian, or other person for furnishing such aid.

(c) Exclusion of certain information respecting foreign power targets

Whenever the target of the electronic surveillance is a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title, and each of the facilities or places at which the surveillance is directed is owned, leased, or exclusively used by that foreign power, the order need not contain the information required by subparagraphs (C), (D), and (F) of subsection (b)(1) of this section, but shall generally describe the information sought, the communications or activities to be subjected to the surveillance, and the type of electronic surveillance involved, including whether physical entry is required.

(d) Duration of order; extensions; review of circumstances under which information was acquired, retained or disseminated

(1) An order issued under this section may approve an electronic surveillance for the period necessary to achieve its purpose, or for ninety days, whichever is less, except that an order under this section shall approve an electronic surveillance targeted against a foreign power, as defined in section 1801(a)(1), (2), or (3) of this title, for the period specified in the application or for one year, whichever is less.

(2) Extensions of an order issued under this chapter may be granted on the same basis as an original order upon an application for an extension and new findings made in the same manner as required for an original order, except that an extension of an order under this Act for a surveillance targeted against a foreign power, as defined in section 1801(a)(5) or (6) of this title, or against a foreign power as defined in section 1801(a)(4) of this title that is not a United States person, may be for a period not to exceed one year if the judge finds probable cause to believe that no communication of any individual United States person will be acquired during the period.

(3) At or before the end of the period of time for which electronic surveillance is approved by an order or an extension, the judge may assess compliance with the minimization procedures by reviewing the circumstances under which information concerning United States person was acquired, retained, or disseminated.

(e) Emergency orders

Notwithstanding any other provision of this chapter, when the Attorney General reasonably determines that—

(1) an emergency situation exists with respect to the employment of electronic surveillance to obtain foreign intelligence information before an order authorizing such surveillance can with due diligence be obtained; and

(2) the factual basis for issuance of an order under this chapter to approve such surveillance exists;

he may authorize the emergency employment of electronic surveillance if a judge having jurisdiction under section 1803 of this title is informed by the Attorney General or his designee at the time of such authorization that the decision has been made to employ emergency electronic surveillance and if an application in accordance with this chapter is made to that judge as soon as practicable, but not more than twenty-four hours after the Attorney General authorizes such surveillance. If the Attorney General authorizes such emergency employment of electronic surveillance, he shall require that the minimization procedures required by this chapter for the issuance of a judicial order be followed. In the absence of a judicial order approving such electronic surveillance, the surveillance shall terminate when the information sought is obtained, when the application for the order is denied, or after the expiration of twenty-four hours from the time of authorization by the Attorney General, whichever is earliest. In the event that such application for approval is denied, or in any other case where the electronic surveillance is terminated and no order is issued approving the surveillance, no information obtained or evidence derived from such surveillance shall be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, grand jury, department, office, agency, regulatory body, legislative committee, or other authority of the United States, a State, or political subdivision thereof, and no information concerning any United States person acquired from such surveillance shall subsequently be used or disclosed in any other manner by Federal officers or employees without the consent of such person, except with the approval of the Attorney General if the information indicates a threat of death or serious bodily harm to any person. A denial of the application made under this subsection may be reviewed as provided in section 1803 of this title.

(f) Testing of electronic equipment; discovering unauthorized electronic surveillance; training of intelligence personnel

Notwithstanding any other provision of this chapter, officers, employees, or agents of the United States are authorized in the normal course of their official duties to conduct electronic surveillance not targeted against the communications of any particular person or persons, under procedures approved by the Attorney General, solely to—

(1) test the capability of electronic equipment, if—

(A) it is not reasonable to obtain the consent of the persons incidentally subjected to the surveillance;

(B) the test is limited in extent and duration to that necessary to determine the capability of the equipment;

(C) the contents of any communication acquired are retained and used only for the purpose of determining the capability of the equipment, are disclosed only to test personnel, and are destroyed before or immediately upon completion of the test; and

(D) *Provided,* That the test may exceed ninety days only with the prior approval of the Attorney General;

(2) determine the existence and capability of electronic surveillance equipment being used by persons not authorized to conduct electronic surveillance, if—

(A) it is not reasonable to obtain the consent of persons incidentally subjected to the surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to determine the existence and capability of such equipment; and

(C) any information acquired by such surveillance is used only to enforce chapter 119 of title 18, or section 605 of title 47, or to protect information from unauthorized surveillance; or

(3) train intelligence personnel in the use of electronic surveillance equipment, if—

(A) it is not reasonable to—

(i) obtain the consent of the persons incidentally subjected to the surveillance;

(ii) train persons in the course of surveillances otherwise authorized by this chapter; or

(iii) train persons in the use of such equipment without engaging in electronic surveillance;

(B) such electronic surveillance is limited in extent and duration to that necessary to train the personnel in the use of the equipment; and

(C) no contents of any communication acquired are retained or disseminated for any purpose, but are destroyed as soon as reasonably possible.

(g) Retention of certifications, applications and orders

Certifications made by the Attorney General pursuant to section 1802(a) of this title and applications made and orders granted under this chapter shall be retained for a period of at least ten years from the date of the certification or application.

(Pub. L. 95-511, title I, § 105, Oct. 25, 1978, 92 Stat. 1790.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(2), means Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, known as the Foreign Intelligence Surveillance Act of 1978, which enacted this chapter, amended sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 1801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1801, 1802, 1804, 1806 of this title.

§ 1806. Use of information

(a) Compliance with minimization procedures; privileged communications; lawful purposes

Information acquired from an electronic surveillance conducted pursuant to this chapter concerning any United States person may be used and disclosed by Federal officers and employees without the consent of the United States person only in accordance with the minimization procedures required by this chapter. No otherwise privileged communication obtained in accordance with, or in violation of, the provisions of this chapter shall lose its privileged character. No information acquired from an electronic surveillance pursuant to this chapter may be used or disclosed by Federal officers or employees except for lawful purposes.

(b) Statement for disclosure

No information acquired pursuant to this chapter shall be disclosed for law enforcement purposes unless such disclosure is accompanied by a statement that such information, or any information derived therefrom, may only be used in a criminal proceeding with the advance authorization of the Attorney General.

(c) Notification by United States

Whenever the Government intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, against an aggrieved person, any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this chapter, the Government shall, prior to the trial, hearing, or other proceeding or at a reasonable time prior to an effort to so disclose or so use that information or submit it in evidence, notify the aggrieved person and the court or other authority in which the information is to be disclosed or used that the Government intends to so disclose or so use such information.

(d) Notification by States or political subdivisions

Whenever any State or political subdivision thereof intends to enter into evidence or otherwise use or disclose in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of a State or a political subdivision thereof, against an aggrieved person any information obtained or derived from an electronic surveillance of that aggrieved person pursuant to the authority of this chapter, the State or political subdivision thereof shall notify the aggrieved person, the court or other authority in which the information is to be disclosed or used, and the Attorney General that the State or political subdivision thereof intends to so disclose or so use such information.

(e) Motion to suppress

Any person against whom evidence obtained or derived from an electronic surveillance to which he is an aggrieved person is to be, or has been, introduced or otherwise used or disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States, a State, or a political subdivision thereof, may move to suppress the evidence obtained or derived from such electronic surveillance on the grounds that—

(1) the information was unlawfully acquired; or

(2) the surveillance was not made in conformity with an order of authorization or approval.

Such a motion shall be made before the trial, hearing, or other proceeding unless there was no opportunity to make such a motion or the person was not aware of the grounds of the motion.

(f) In camera and ex parte review by district court

Whenever a court or other authority is notified pursuant to subsection (c) or (d) of this section, or whenever a motion is made pursuant to subsection (e) of this section, or whenever any motion or request is made by an aggrieved person pursuant to any other statute or rule of the United States or any State before any court or other authority of the United States or any State to discover or obtain applications or orders or other materials relating to electronic surveillance or to discover, obtain, or suppress evidence or information obtained or derived from electronic surveillance under this Act, the United States district court or, where the motion is made before another authority, the United States district court in the same district as the authority, shall, notwithstanding any other law, if the Attorney General files an affidavit under oath that disclosure or an adversary hearing would harm the national security of the United States, review in camera and ex parte the application, order, and such other materials relating to the surveillance as may be necessary to determine whether the surveillance of the aggrieved person was lawfully authorized and conducted. In making this determination, the court may disclose to the aggrieved person, under appropriate security procedures and protective orders, portions of the application, order, or other materials relating to the surveillance only where such disclosure is necessary to make an accurate determination of the legality of the surveillance.

(g) Suppression of evidence; denial of motion

If the United States district court pursuant to subsection (f) of this section determines that the surveillance was not lawfully authorized or conducted, it shall, in accordance with the requirements of law, suppress the evidence which was unlawfully obtained or derived from electronic surveillance of the aggrieved person or otherwise grant the motion of the aggrieved person. If the court determines that the surveillance was lawfully authorized and conducted, it shall deny the motion of the aggrieved person except to the extent that due process requires discovery or disclosure.

(h) Finality of orders

Orders granting motions or requests under subsection (g) of this section, decisions under this section that electronic surveillance was not lawfully authorized or conducted, and orders of the United States district court requiring review or granting disclosure of applications, orders, or other materials relating to a surveillance shall be final orders and binding upon all courts of the United States and the several States except a United States court of appeals and the Supreme Court.

(i) Destruction of unintentionally acquired information

In circumstances involving the unintentional acquisition by an electronic, mechanical, or other surveillance device of the contents of any radio communication, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes, and if both the sender and all intended recipients are located within the United States, such contents shall be destroyed upon recognition, unless the Attorney General determines that the contents indicate a threat of death or serious bodily harm to any person.

(j) Notification of emergency employment of electronic surveillance; contents; postponement, suspension or elimination

If an emergency employment of electronic surveillance is authorized under section 1805(e) of this title and a subsequent order approving the surveillance is not obtained, the judge shall cause to be served on any United States person named in the application and on such other United States persons subject to electronic surveillance as the judge may determine in his discretion it is in the interest of justice to serve, notice of—

(1) the fact of the application;

(2) the period of the surveillance; and

(3) the fact that during the period information was or was not obtained.

On an ex parte showing of good cause to the judge the serving of the notice required by this subsection may be postponed or suspended for a period not to exceed ninety days. Thereafter, on a further ex parte showing of good cause, the court shall forego ordering the serving of the notice required under this subsection.

(Pub. L. 95–511, title I, § 106, Oct. 25, 1978, 92 Stat. 1793.)

REFERENCES IN TEXT

This Act, referred to in subsec. (f), means Pub. L. 95–511, Oct. 25, 1978, 92 Stat. 1783, known as the Foreign Intelligence Surveillance Act of 1978, which enacted this chapter, amended sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 1801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1802 of this title.

§ 1807. Report to Administrative Office of the United States Court and to Congress

In April of each year, the Attorney General shall transmit to the Administrative Office of the United States Court and to Congress a report setting forth with respect to the preceding calendar year—

(a) the total number of applications made for orders and extensions of orders approving electronic surveillance under this chapter; and

(b) the total number of such orders and extensions either granted, modified, or denied.

(Pub. L. 95–511, title I, § 107, Oct. 25, 1978, 92 Stat. 1795.)

§ 1808. Report of Attorney General to congressional committees; limitation on authority or responsibility of information gathering activities of congressional committees; report of congressional committees to Congress

(a) On a semiannual basis the Attorney General shall fully inform the House Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence concerning all electronic surveillance under this chapter. Nothing in this chapter shall be deemed to limit the authority and responsibility of the appropriate committees of each House of Congress to obtain such information as they may need to carry out their respective functions and duties.

(b) On or before one year after October 25, 1978, and on the same day each year for four years thereafter, the Permanent Select Committee on Intelligence and the Senate Select Committee on Intelligence shall report respectively to the House of Representatives and the Senate, concerning the implementation of this Act. Said reports shall include but not be limited to an analysis and recommendations concerning whether this Act should be (1) amended, (2) repealed, or (3) permitted to continue in effect without amendment.

(Pub. L. 95-511, title I, § 108, Oct. 25, 1978, 92 Stat. 1795.)

REFERENCES IN TEXT

This Act, referred to in subsec. (b), means Pub. L. 95-511, Oct. 25, 1978, 92 Stat. 1783, known as the Foreign Intelligence Surveillance Act of 1978, which enacted this chapter, amended sections 2511, 2518, and 2519 of Title 18, Crimes and Criminal Procedure, and enacted provisions set out as notes under section 1801 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1802 of this title.

§ 1809. Criminal sanctions

(a) Prohibited activities

A person is guilty of an offense if he intentionally—

(1) engages in electronic surveillance under color of law except as authorized by statute; or

(2) discloses or uses information obtained under color of law by electronic surveillance, knowing or having reason to know that the information was obtained through electronic surveillance not authorized by statute.

(b) Defense

It is a defense to a prosecution under subsection (a) of this section that the defendant was a law enforcement or investigative officer engaged in the course of his official duties and the electronic surveillance was authorized by and conducted pursuant to a search warrant or court order of a court of competent jurisdiction.

(c) Penalties

An offense described in this section is punishable by a fine of not more than $10,000 or imprisonment for not more than five years, or both.

(d) Federal jurisdiction

There is Federal jurisdiction over an offense under this section if the person committing the offense was an officer or employee of the United States at the time the offense was committed.

(Pub. L. 95-511, title I, § 109, Oct. 25, 1978, 92 Stat. 1796.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1810 of this title.

§ 1810. Civil liability

An aggrieved person, other than a foreign power or an agent of a foreign power, as defined in section 1801(a) or (b)(1)(A) of this title, respectively, who has been subjected to an electronic surveillance or about whom information obtained by electronic surveillance of such person has been disclosed or used in violation of section 1809 of this title shall have a cause of action against any person who committed such violation and shall be entitled to recover—

(a) actual damages, but not less than liquidated damages of $1,000 or $100 per day for each day of violation, whichever is greater;

(b) punitive damages; and

(c) reasonable attorney's fees and other investigation and litigation costs reasonably incurred.

(Pub. L. 95-511, title I, § 110, Oct. 25, 1978, 92 Stat. 1796.)

§ 1811. Authorization during time of war

Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this chapter to acquire foreign intelligence information for a period not to exceed fifteen calendar days following a declaration of war by the Congress.

(Pub. L. 95-511, title I, § 111, Oct. 25, 1978, 92 Stat. 1796.)

TRADING WITH THE ENEMY ACT OF 1917

ACT OCT. 6, 1917, CH. 106, 40 STAT. 411

ACT REFERRED TO IN OTHER SECTIONS

This Act is referred to in section 1982 of this Appendix; title 19 section 2581; title 22 sections 1382, 1384, 1631a, 1631o; title 28 section 2680.

§ 5. Suspension of provisions relating to ally of enemy; regulation of transactions in foreign exchange of gold or silver, property transfers, vested interests, enforcement and penalties

[*See main edition for text of* (a)]

(b)(1) During the time of war, the President may, through any agency that he may designate, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

[*See main edition for text of* (A) *and* (B)]

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person.

[*See main edition for text of* (2)]

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof: *Provided, however,* That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

(As amended Dec. 28, 1977, Pub. L. 95-223, title I, §§ 101(a), 102, 103(b), 91 Stat. 1625, 1626.)

AMENDMENTS

1977—Subsec. (b)(1). Pub. L. 95-223, §§ 101(a), 102, substituted "During the time of war, the President may, through any agency that he may designate, and under such rules and regulations" for "During the time of war or during any other period of national emergency declared by the President, the President may, through any agency, that he may designate, or otherwise, and under such rules and regulations" in the provisions preceding subpar. (A), and, in the provisions following subpar. (B), struck out "; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision" following "control of such person".

Subsec. (b)(3). Pub. L. 95-22, § 103(b), struck out provisions that whoever willfully violated any of the provisions of this subdivision or of any license, order, rule, or regulation issued thereunder, could be fined not more than $10,000, or, if a natural person, could be imprisoned for not more than ten years, or both; and that any officer, director, or agent of any corporation who knowingly participated in that violation could be punished by a like fine, imprisonment, or both.

EXTENSION OF NATIONAL EMERGENCY POWERS

Under Section 101(b) of Public Law 95-223 (91 Stat. 1625; 50 U.S.C. App. 5 note), and a previous Determination made by me on September 8, 1978 (43 Fed. Reg. 40449 (1978)), the exercise of certain authorities under the Trading With the Enemy Act [sections 1 to 6, 7 to 39, and 41 to 44 of this Appendix] is scheduled to terminate on September 14, 1979.

I hereby determine that the extension for one year of the exercise of those authorities with respect to the applicable countries is in the national interest of the United States.

Therefore, pursuant to the authority vested in me by Section 101(b) of Public Law 95-223 [set out as a

note below], I extend for one year, until September 14, 1980, the exercise of those authorities with respect to those countries presently affected by: (1) the Foreign Assets Control Regulations, 31 CFR Part 500, (2) the Transaction Control Regulations, 31 CFR Part 505, (3) the Cuban Assets Control Regulations, 31 CFR Part 515, and (4) the Foreign Funds Control Regulations, 31 CFR Part 520.

The extension of the authorities with respect to the People's Republic of China is in connection with implementation of the Agreement Concerning the Settlement of Claims entered into between the Government of the United States and the Government of the People's Republic of China on May 11, 1979.

This Determination shall be published in the Federal Register.

JIMMY CARTER.

EXTENSION AND TERMINATION OF NATIONAL EMERGENCY POWERS UNDER THE TRADING WITH THE ENEMY ACT

Section 101(b) and (c) of Pub. L. 95-223 provided that:

"(b) Notwithstanding the amendment made by subsection (a) [amending subsec. (b)(1) of this section], the authorities conferred upon the President by section 5(b) of the Trading With the Enemy Act [subsec. (b) of this section], which were being exercised with respect to a country on July 1, 1977, as a result of a national emergency declared by the President before such date, may continue to be exercised with respect to such country, except that, unless extended, the exercise of such authorities shall terminate (subject to the savings provisions of the second sentence of section 101(a) of the National Emergencies Act [section 1601(a) of this title]) at the end of the two-year period beginning on the date of enactment of the National Emergencies Act [Sept. 14, 1976]. The President may extend the exercise of such authorities for one-year periods upon a determination for each such extension that the exercise of such authorities with respect to such country for another year is in the national interest of the United States.

"(c) The termination and extension provisions of subsection (b) of this section supersede the provisions of section 101(a) [section 1601(a) of this title] and of title II [section 1621 et seq. of this title] of the National Emergencies Act to the extent that the provisions of subsection (b) of this section are inconsistent with those provisions."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 12 sections 212, 3409, 3413; title 28 section 2680; title 31 sections 824, 1141.

§ 6. Alien Property Custodian; general powers and duties

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 16. Offenses; punishment; forfeitures of property

Whoever shall willfully violate any of the provisions of this Act [sections 1 to 6, 7 to 39, and 41 to 44 of this Appendix] or of any license, rule or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act [said sections] shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

(As amended Dec. 28, 1977, Pub. L. 95-233, title I, § 103(a), 91 Stat. 1626.)

AMENDMENTS

1977—Pub. L. 95-223 substituted "$50,000" for "$10,000".

MILITARY SELECTIVE SERVICE ACT

ACT JUNE 24, 1948, CH. 625, 62 STAT. 604

ACT REFERRED TO IN OTHER SECTIONS

This Act is referred to in title 10 sections 511, 512, 595, 1475; title 22 section 2520; title 26 section 3121; title 28 section 631; title 29 section 928; title 38 sections 2021, 2024; title 42 sections 410, 2996f.

§ 451. Short title; Congressional declaration of policy

[*See main edition for text of* (a) *to* (e)]

(f) The Congress further declares that the Selective Service System should remain administratively independent of any other agency, including the Department of Defense.

(As amended Nov. 9, 1979, Pub. L. 96-107, title VIII, § 812, 93 Stat. 816.)

AMENDMENTS

1979—Subsec. (f). Pub. L. 96-107 added subsec. (f).

SELECTIVE SERVICE REFORM; PRESIDENTIAL PLAN, LEGISLATIVE PROPOSALS, ETC.

Section 811 of Pub. L. 96-107 provided that:

"(a) The President shall prepare and transmit to the Congress a plan for a fair and equitable reform of the existing law providing for registration and induction of persons for training and service in the Armed Forces. Such plan shall include recommendations with respect to—

"(1) the desirability and feasibility of resuming registration under the Military Selective Service Act [see References in Text note set out under this section] as in existence on the date of the enactment of this Act [Nov. 9, 1979];

"(2) the desirability and feasibility of establishing a method of automatically registering persons under the Military Selective Service Act [see References in Text note set out under this section] through a centralized, automated system using existing records, together with a discussion of the impact of such method, or of alternative methods of establishing such a registration system, on privacy rights under the Constitution and under statutes protecting such rights (including section 552a of title 5, United States Code, commonly referred to as the 'Privacy Act') and any proposal for reform of such Privacy Act or other statutes, relevant court decisions relating to Selective Service procedures, and the impact of such alternative methods on other constitutional issues;

"(3) the desirability of the enactment of authority for the President to induct persons registered under such Act for training and service in the Armed

Forces during any period with respect to which the President determines that such authority is required in the interest of the national defense;

"(4) whether women should be subject to registration under such Act and to induction for training and service in the Armed Forces under such Act;

"(5) the desirability and feasibility of providing authority for the President to induct persons into the Individual Ready Reserve;

"(6) whether persons registered under such Act should also be immediately classified and examined or whether classification and examination of registrants should be subject to the discretion of the President;

"(7) such changes in the organization and operation of the Selective Service System as the President determines are necessary to enable the Selective Service System to meet the personnel requirements of the Armed Forces during a mobilization in a more efficient and expeditious manner than is presently possible;

"(8) the desirability, in the interest of preserving discipline and morale in the Armed Forces, of establishing a national youth service program permitting volunteer work, for either public or private public service agencies, as an alternative to military service;

"(9) such other changes in existing law relating to registration, classification, selection, and induction as the President considers appropriate; and

"(10) other possible procedures that could be established to enable the Armed Forces to meet their personnel requirements.

"(b) The President shall transmit with the plan required by subsection (a) proposals for such legislation as may be necessary to implement the plan and to revise and modernize the Military Selective Service Act [see References in Text note set out under this section].

"(c) The plan required by subsection (a), together with the proposed legislation required by subsection (b), shall be transmitted to the Congress not later than January 15, 1980, or the end of the three-month period beginning on the date of the enactment of this Act [Nov. 9, 1979], whichever is later."

§ 454. Persons liable for training and service

EXECUTIVE ORDER NO. 11415

Ex. Ord. No. 11415, June 24, 1968, 33 F.R. 9329, formerly set out as a note under this section, which established the National Advisory Committee on the Selection of Physicians, Dentists, and Allied Specialists and the National Health Resources Advisory Committee, was revoked by section 5-110 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out as a note under section 2251 of this Appendix.

§ 456. Deferments and exemptions from training and service

TRANSFER OF FUNCTIONS

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 462. Offenses and penalties

ADVERTISING PROHIBITION ON SPECIAL DISCHARGE REVIEW PROGRAM

Pub. L. 95-79, title VIII, § 810, July 30, 1977, 91 Stat. 335, provided that: "No funds authorized or appropriated under this or any other Act shall be expended to purchase advertising of any sort for the purpose of advertising the existence of the special discharge review program for certain individuals who served in the Armed Forces of the United States between August 4, 1964, and March 28, 1973, which was established by order of the Secretary of Defense on April 5, 1977."

§ 464. Soldiers' and Sailors' Civil Relief Act as applicable

TRANSFER OF FUNCTIONS

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 466. Definitions

TRANSFER OF FUNCTIONS

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 468. Utilization of industry

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

ACT OCT. 17, 1940, CH. 888, 54 STAT. 1178

ARTICLE I—GENERAL PROVISIONS

§ 511. Definitions

TRANSFER OF FUNCTIONS

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECOND WAR POWERS ACT, 1942

ACT MAR. 27, 1942, CH. 199, 56 STAT. 176

TITLE I—EMERGENCY POWERS OF THE INTERSTATE COMMERCE COMMISSION OVER MOTOR AND WATER CARRIERS

Sec.
631 to 631b. Repealed.

TITLE VII—POLITICAL ACTIVITY

637. Repealed.

TITLE I—EMERGENCY POWERS OF THE INTERSTATE COMMERCE COMMISSION OVER MOTOR AND WATER CARRIERS

§§ 631 to 631b. Repealed. Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1468

Section 631, act Mar. 27, 1942, ch. 199, title I, § 101, 56 Stat. 177, amended section 304 of Title 49, Transportation.

Section 631a, act Mar. 27, 1942, ch. 199, title I, § 102, 56 Stat. 177, amended section 310a of Title 49.

Section 631b, act Mar. 27, 1942, ch. 199, title I, § 103, 56 Stat. 177, amended section 911 of Title 49.

TITLE VII—POLITICAL ACTIVITY

§ 637. Repealed. Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 651

Section, act Mar. 27, 1942, ch. 199, title VII, § 701, 56 Stat. 181, amended section 118i of Title 5, Executive

Departments and Government Officers and Employees.

TITLE XIII—INSPECTION AND AUDIT OF WAR CONTRACTORS

§ 643. Plant, books, and records of war contractors; definition of defense contract; agency designated to administer provisions

TERMINATION OF NATIONAL EMERGENCY

Declaration of national emergency in effect on Sept. 14, 1976, was terminated two years from that date by section 1601 of Title 50, War and National Defense.

PHOTOGRAPHING, MAPPING OR OTHER REPRESENTATION OF MILITARY OR DEFENSE PROPERTIES

ACT JUNE 25, 1942, CH. 447, 56 STAT. 390

§ 785. Effective date of sections 781 to 785

TERMINATION OF NATIONAL EMERGENCY

Declaration of national emergency in effect on Sept. 14, 1976, was terminated two years from that date by section 1601 of Title 50, War and National Defense.

ACT MAR. 23, 1951, CH. 15, 65 STAT. 7

ACT REFERRED TO IN OTHER SECTIONS

This act is referred to in title 22 sections 2393, 2509, 2602, 2762; title 26 sections 1481, 6103.

TITLE I—RENEGOTIATION OF CONTRACTS

TERMINATION OF TITLE AND RENEGOTIATION BOARD

Under section 1212(c)(1) of this Appendix, the provisions of sections 1211 to 1224 of this Appendix are not applicable to receipts and accruals under contracts attributable to performance after September 30, 1976.

The Renegotiation Board was terminated and all property, including records, of the Board was transferred to the Administrator, General Services Administration, on Mar. 31, 1979, pursuant to Pub. L. 95-431, title V, § 501, Oct. 10, 1978, 92 Stat. 1043.

§ 1213. Definitions

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of Title 42, The Public Health and Welfare. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42.

§ 1215. Renegotiation proceedings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1214, 1216, 1217, 1218 of this appendix; title 41 section 611.

§ 1216. Exemptions

CODIFICATION

Part III of the Interstate Commerce Act, referred to in subsec. (a)(4), which was classified to chapter 12 (§ 901 et seq.) of Title 49, Transportation, was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49, and is now covered by subchapter III (§ 10541 et seq.) of chapter 105 of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

§ 1217. Renegotiation Board

TERMINATION OF RENEGOTIATION BOARD

The Renegotiation Board was terminated and all property, including records, of the Board was transferred to the Administrator, General Services Administration, on Mar. 31, 1979, pursuant to Pub. L. 95-431, title V, § 501, Oct. 10, 1978, 92 Stat. 1043.

NATIONAL EMERGENCY AND WAR SHIPPING ACTS

ACT MAR. 24, 1943, CH. 26, 57 STAT. 45

§ 1291. Rights of American seamen on privately owned and operated American vessels extended to seamen employed through the War Shipping Administration; exceptions; definitions

TRANSFER OF FUNCTIONS

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SURPLUS PROPERTY ACT OF 1944

ACT OCT. 3, 1944, CH. 479, 58 STAT. 765

§ 1622. Disposal to local governments and nonprofit institutions

[*See main edition for text of section*]

(Oct. 3, 1944, ch. 479, § 13, 58 Stat. 770; Sept. 18, 1945, ch. 368, § 2, 59 Stat. 533; May 3, 1946, ch. 248, § 5, 60 Stat. 169; July 30, 1947, ch. 404, 61 Stat. 678; June 10, 1948, ch. 433, §§ 1, 2, 62 Stat. 350; June 29, 1948, ch. 727, 62 Stat. 1103; June 30, 1949, ch. 288, title I, § 105, title VI, § 602(a)(1), formerly title V, § 502(a)(1), 63 Stat. 381, 399, renumbered Sept. 5, 1950, ch. 849, § 6(a), (b), 64 Stat. 583, and amended Oct. 1, 1949, ch. 589, §§ 1, 5, 63 Stat. 700; Aug. 23, 1958, Pub. L. 85-726, title XIV, § 1402(c), 72 Stat. 807; July 20, 1961, Pub. L. 87-90, 75 Stat. 211; May 21, 1970, Pub. L. 91-258, title I, § 52(b)(6), 84 Stat. 235; Oct. 22, 1970, Pub. L. 91-485, § 5, 84 Stat. 1085; Aug. 4, 1972, Pub. L. 92-362, § 2, 86 Stat. 504.)

CODIFICATION

Source credit is set out in this supplement to correct typographical error appearing in the main edition.

SALE OF SURPLUS WAR-BUILT VESSELS

ACT MAR. 8, 1946, CH. 82, 60 STAT. 41

§ 1741. Exchange of vessels

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 section 1059.

DEFENSE PRODUCTION ACT OF 1950

ACT SEPT. 8, 1950, CH. 932, 64 STAT. 798

§ 2061. Short title

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-37, § 1, June 1, 1977, 91 Stat. 178, provided: "That this Act [which amended section 2166(a) of this Appendix] may be cited as the 'Defense Production Act Extension Amendments of 1977'."

DELEGATION OF FUNCTIONS

[*See main edition for text of first par.*]

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of Title 42, The Public Health and Welfare.

TITLE I—PRIORITIES AND ALLOCATIONS

§§ 2071 to 2073

TERMINATION DATE

Termination of sections on Jan. 28, 1980, see section 2166(a) of this Appendix.

TITLE III—EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

§ 2091. Loan guarantees

TERMINATION DATE

Termination of section on Jan. 28, 1980, see section 2166(a) of this Appendix.

§ 2092. Loans to private business enterprises; Congressional action; notification of Committees of certain proposed loans, resolution of disapproval, continuity of session, computation of period

TERMINATION DATE

Termination of section on Jan. 28, 1980, see section 2166(a) of this Appendix.

EXECUTIVE ORDER NO. 10634

Ex. Ord. No. 10634, Aug. 31, 1955, 20 F.R. 6433, as amended by Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971, set out as a note under this section, which related to loans for facilities destroyed or damaged by major disaster, was revoked by section 5-106 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out as a note under section 2251 of this Appendix.

§ 2093. Purchase of raw materials and installation of equipment

[*See main edition for text of (a) to (e)*]

(f) Transfer of excess materials to national stockpile

Notwithstanding any other provision of law to the contrary, metals, minerals, and materials acquired pursuant to the provisions of this section which, in the judgment of the President, are excess to the needs of programs under this Act [sections 2061 to 2169 of this Appendix], shall be transferred to the National Defense Stockpile established by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.), when the President deems such action to be in the public interest. Transfers made pursuant to this subsection shall be made without charge against or reimbursement from funds appropriated for the purposes of such Act, except that costs incident to such transfer other than acquisition costs shall be paid or reimbursed from such funds, and the acquisition costs of such metals, minerals, and materials transferred shall be deemed to be net losses incurred by the transferring agency and the notes payable issued to the Secretary of the Treasury representing the amounts thereof shall be canceled. Upon the cancellation of any such notes the aggregate amount of borrowing which may be outstanding at any one time under section 304(b) of this Act, as amended [section 2094(b) of this Appendix], shall be reduced in an amount equal to the amount of any notes so canceled.

[*See main edition for text of (g)*]

(As amended July 30, 1979, Pub. L. 96-41, § 3(c), 93 Stat. 325.)

REFERENCES IN TEXT

The Strategic and Critical Materials Stock Piling Act, referred to in subsec. (f), is act June 7, 1939, ch. 190, as revised generally by Pub. L. 96-41, § 2, July 30, 1979, 93 Stat. 319, which is classified generally to subchapter III (§ 98 et seq.) of chapter 5 of Title 50, War and National Defense. For complete classification of this Act to the Code, see section 98 of Title 50 and Tables.

AMENDMENTS

1979—Subsec. (f), Pub. L. 96-41 substituted "the National Defense Stockpile established by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 et seq.)" for "the national stockpile established pursuant to the Act of June 7, 1939, as amended (50 U.S.C. 98-98h)" and "from funds appropriated for the purposes of such Act" for "from funds available under such Act of June 7, 1939, as amended".

TERMINATION DATE

Termination of section on Jan. 28, 1980, see section 2166(a) of this Appendix.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2094, 2161 of this Appendix; title 50 section 98c.

§ 2094. Utilization and creation of agencies; cancellation of unpaid notes; disposition of funds

TERMINATION DATE

Termination of sections on Jan. 28, 1980, see section 2166(a) of this Appendix.

TITLE IV—PRICE AND WAGE STABILIZATION

§§ 2101 to 2112. Omitted

EXECUTIVE ORDER NO. 10494

Ex. Ord. No. 10494, Oct. 15, 1953, 18 F.R. 6585, as amended by Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971, which related to the disposition of remaining functions, was revoked by section 5-103 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out as a note under section 2251 of this Appendix.

TITLE VII—GENERAL PROVISIONS

§§ 2151, 2152

TERMINATION DATE

Termination of sections on Jan. 28, 1980, see section 2166(a) of this Appendix.

§ 2153. Delegation of authority; creation of new agencies; appointment and compensation of officers and personnel; State representation in regional offices

TERMINATION DATE

Termination of section on Jan. 28, 1980, see section 2166(a) of this Appendix.

EX. ORD. NO. 10480. ADMINISTRATION OF DEFENSE MOBILIZATION PROGRAM

Ex. Ord. No. 10480, eff. Aug. 18, 1953, 18 F.R. 4939, as amended by Ex. Ord. No. 10489, Sept. 28, 1953, 18 F.R. 6201; Ex. Ord. No. 10537, June 22, 1954, 19 F.R. 3807; Ex. Ord. No. 10574, Nov. 8, 1954, 19 F.R. 7249; Ex. Ord. No. 10662, Mar. 14, 1956, 21 F.R. 1673; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 10819, May 11, 1959, 24 F.R. 3779; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 11062, Nov. 20, 1962, 27 F.R. 11447; Ex. Ord. No. 11956, Jan. 13, 1977, 42 F.R. 2947; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

PART I. GENERAL DIRECTION OF PROGRAM

SECTION 101. (a) The Director of the Federal Emergency Management Agency shall, on behalf of the President, coordinate all mobilization activities of the executive branch of the Government, including all such activities relating to production, procurement, manpower, stabilization, and transport. Every officer and agency of the Government having functions under the Defense Production Act of 1950, as amended [see section 2061 of this Appendix], delegated, redelegated, or otherwise assigned thereto by or under the authority of the President after the date of this order (whether heretofore or hereafter acquired, or acquired by this order) shall perform the said functions subject to the direction and control of the Director of the Federal Emergency Management Agency.

(b) In carrying out the functions conferred upon him by this order, the Director of the Federal Emergency Management Agency shall, among other things:

[*See main edition for text of 1 to 5; Sec. 102*]

PART II. PRIORITIES AND ALLOCATIONS

SEC. 201. (a) The functions conferred upon the President by Title I of the Defense Production Act of 1950, as amended [sections 2071 to 2074 of this Appendix], are hereby delegated to the Director of the Federal Emergency Management Agency, who shall, in carrying out the said functions, provide by redelegation or otherwise for their performance, subject to the provisions of section 101 of this order, by

[*See main edition for text of 1 to 4*]

(b) Findings made under or pursuant to and for the purposes of section 101(b) of the Act [section 2071(b) of this Appendix] shall not be effective until approved by the Director of the Federal Emergency Management Agency.

PART III. EXPANSION OF PRODUCTIVE CAPACITY AND SUPPLY

SEC. 301. The Department of Defense, the Atomic Energy Commission, the Department of Commerce, the Department of the Interior, the Department of Agriculture, the General Services Administration, and the National Aeronautics and Space Administration, in this Part referred to as guaranteeing agencies, each officer having functions delegated to him pursuant to section 201(a) of this order, and each other agency of the Government having mobilization functions, shall, within areas of production designated by the Director of the Federal Emergency Management Agency, develop and promote measures for the expansion of productive capacity and of production and supply of materials and facilities necessary for the national defense.

[*See main edition for text of Secs. 302 and 303*]

SEC. 304. The Director of the Federal Emergency Management Agency is hereby authorized and directed to encourage the exploration, development, and mining of critical and strategic minerals and metals, and to make provision for the development of substitutes for strategic and critical materials, as authorized by and subject to the provisions of section 303 of the Defense Production Act of 1950, as amended [section 2093 of this Appendix].

[*See main edition for text of Secs. 305 and 306*]

SEC. 307. The functions conferred upon the President by section 303(f) of the Defense Production Act of 1950, as amended [section 2093(f) of this Appendix], with respect to transfers to the stockpile referred to in the said section, are hereby delegated to the Director of the Federal Emergency Management Agency.

SEC. 308. The authority conferred upon the President by section 304(b) of the Defense Production Act of 1950, as amended [section 2094(b) of this Appendix], to approve borrowing from the Treasury of the United States is hereby delegated to the Director of the Federal Emergency Management Agency.

[*See main edition for text of Sec. 309*]

SEC. 310. [*See main edition for text of* (a)]

(b) Loans under section 310(a) hereof (1) shall be made upon such terms and conditions as the Secretary shall determine, (2) shall be made only after the Secretary has determined in each instance that financial assistance is not available on reasonable terms from private sources or from other governmental sources, and (3) shall be made only upon certificate of essentiality of the loan, which certificate shall be made by the Director of the Federal Emergency Management Agency.

[*See main edition for text of* (c)]

SEC. 311. [*See main edition for text of* (a)]

(b) Loans under section 311(a) hereof (1) shall be made upon such terms and conditions as the said Bank shall determine, (2) shall be made only after the Bank has determined in each instance that financial assistance is not available on reasonable terms from private sources and that the loan involved cannot be made under the provisions of and from funds available to the Bank under the Export-Import Bank Act of 1945, as amended [12 U.S.C. 635 et seq.], and (3) shall be made only upon certificate of essentiality of the loan, which certificate shall be made by the Director of the Federal Emergency Management Agency.

[*See main edition for text of* (c)]

SEC. 312. The functions conferred by sections 303, 305 and 306 of this order shall be carried out in accordance with programs certified by the Director of the Federal Emergency Management Agency. Each officer and agency of the Government having mobilization functions shall make recommendations to the Director of the Federal Emergency Management Agency for the issuance of certificates or other action under sections 302 and 303 of the Defense Production Act of 1950, as amended [sections 2092 and 2093 of this Appendix], and for the issuance of certificates under subsections (e) and (g) of section 168 of the Internal Revenue Code of 1954 [Title 26, Internal Revenue Code] with respect to the materials and facilities

which are, pursuant to the designation of areas of production by the Director of the Federal Emergency Management Agency under section 301 of this order, as amended, within the jurisdiction of such officer or agency.

SEC. 313. The Director of the Federal Emergency Management Agency is hereby authorized and directed to submit to the Congress the reports required by the second proviso of section 304(b) of the Defense Production Act of 1950, as amended [section 2094(b) of this title].

PART IV. LABOR SUPPLY

SEC. 401. The Secretary of Labor shall utilize the functions vested in him so as to meet most effectively the labor needs of defense industry and essential civilian employment, and to this end he shall:

[*See main edition for text of (a)*]

(b) Consult with and advise each delegate of the Director of the Federal Emergency Management Agency referred to in section 201(a) of this order and each official of the Government exercising guarantee or loan functions under Part III of this order concerning (1) the effect of contemplated actions on labor supply and utilization, (2) the relation of labor supply to materials and facilities requirements, (3) such other matters as will assist in making the exercise of priority and allocations functions consistent with effective utilization and distribution of labor.

[*See main edition for text of (c) and (d)*]

(e) Determine the occupations critical to meeting the labor requirements of defense and essential civilian activities and with the Secretary of Defense, the Director of Selective Service, and such other persons as the Director of the Federal Emergency Management Agency may designate and develop policies applicable to the induction and deferment of personnel for the armed services, except for civilian personnel in the reserves.

[*See main edition for text of Part V*]

PART VI. GENERAL PROVISIONS

[*See main edition for text of Secs. 601 to 604*]

SEC. 605. The Economic Stabilization Agency, established by Executive Order No. 10161 of September 9, 1950 [see note under section 2071 of this Appendix], is continued to October 31, 1953, under the direction of the Director of the Federal Emergency Management Agency who shall serve *ex officio* as the Economic Stabilization Administrator for the purpose of winding up and liquidating the affairs of said Agency.

[*See main edition for text of Secs. 606 to 608*]

SEC. 609. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Atomic Energy Commission, and (b) with respect to petroleum, gas, solid fuels and electric power, upon the Secretary of the Interior.

SEC. 610. Whenever the Director of the Federal Emergency Management Agency believes that the functions of an Executive agency have been modified pursuant to law in such manner as to require the amendment of any Executive order which relates to the assignment of emergency preparedness functions or the administration of mobilization programs, he shall promptly submit any proposals for the amendment of such Executive orders to the Director of the Office of Management and Budget in accordance with the provisions of Executive Order No. 11030, as amended [set out as a note under section 1505 of Title 44, Public Printing and Documents].

EX. ORD. NO. 11179. NATIONAL DEFENSE EXECUTIVE RESERVE

Ex. Ord. No. 11179, Sept. 22, 1964, 29 F.R. 13239, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

[*See main edition for text of opening par. and Sec. 1*]

SEC. 2. The Director of the Federal Emergency Management Agency (hereinafter referred to as the Director) shall administer the Executive Reserve program; coordinate the activities of other agencies in establishing units of the Reserve; provide for appropriate standards of recruitment and training; approve prospective members of the Executive Reserve; and issue necessary rules and regulations in connection with the program.

[*See main edition for text of Secs. 3 to 8*]

§§ 2154 to 2157

TERMINATION DATE

Termination of sections on Jan. 28, 1980, see section 2166(a) of this Appendix.

§ 2159. Exemption from Administrative Procedure provisions; statements in rules, regulations, and orders as to consultation with industry representatives

TERMINATION DATE

Termination of section on Jan. 28, 1980, see section 2166(a) of this Appendix.

§ 2160. Employment of personnel; appointment policies; nucleus executive reserve; use of confidential information by employees; printing and distribution of reports

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission or the Chairman thereof were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

TERMINATION DATE

Termination of section on Jan. 28, 1980, see section 2166(a) of this Appendix.

EX. ORD. NO. 10647. EMPLOYMENT AND APPOINTMENT OF PERSONNEL

Ex. Ord. No. 10647, Nov. 29, 1955, 20 F.R. 8769, as amended by Ex. Ord. No. 11355, May 26, 1967, 32 F.R. 7803; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[*See main edition for text of first par. and Parts I and II*]

PART III—CERTIFICATIONS, STATEMENTS, AND REPORTS

[*See main edition for text of Secs. 301 to 304*]

SEC. 305. (a) At least once every twelve months the Director of the Office of Personnel Management shall survey appointments made under section 710(b)(1) of the Act [subsec. (b)(1) of this section]. Such survey shall include the following:

[*See main edition for text of (1) to (6)*]

(b) A report of each such survey shall be made by the Director of the Office of Personnel Management

to the President and to the Joint Committee on Defense Production and shall include the following:

[*See main edition for text of (1) and (2)*]

(3) Such comments or recommendations as the Director of the Office of Personnel Management may deem proper.

[*See main edition for text of Sec. 306*]

§§ 2161 to 2163

TERMINATION DATE

Termination of sections on Jan. 28, 1980, see section 2166(a) of this Appendix.

§§ 2164, 2165

TERMINATION DATE

Termination of sections on Jan. 28, 1980, see section 2166(a) of this Appendix.

§ 2166. Termination of Act

(a) Title I [sections 2071 to 2074 of this Appendix] (except section 104 [section 2074 of this Appendix]) title III [sections 2091 to 2094 of this Appendix], and title VII [sections 2151 to 2169 of this Appendix] (except sections 708, 714, and 719 [sections 2158, 2163a, and 2168 of this Appendix]) of this Act, and all authority conferred thereunder, shall terminate at the close of January 28, 1980, *Provided*, That all authority hereby or hereafter extended under title III of this Act [sections 2091 to 2094 of this Appendix] shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts. Section 714 of this Act [section 2163a of this Appendix], and all authority conferred thereunder, shall terminate at the close of July 31, 1953. Section 104 [section 2074 of this Appendix], and title II [section 2081 of this Appendix], and title VI [sections 2131 to 2137 of this Appendix] of this Act, and all authority conferred thereunder, shall terminate at the close of June 30, 1953. Title IV [sections 2101 to 2112 of this Appendix] and V [sections 2121 to 2123 of this Appendix] of this Act, and all authority conferred thereunder, shall terminate at the close of April 30, 1953.

[*See main edition for text of (b) to (d)*]

(As amended June 1, 1977, Pub. L. 95–37, § 2, 91 Stat. 178; Sept. 29, 1979, Pub. L. 96–77, 93 Stat. 588.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96–77 extended the termination date from Sept. 30, 1979, to Jan. 28, 1980.

1977—Subsec. (a). Pub. L. 95–37 extended the termination date from Sept. 30, 1977 to Sept. 30, 1979.

§ 2167. Feasibility study of application of uniform cost accounting standards to defense procurement contracts; consultations; reports

TERMINATION DATE

Termination of section on Jan. 28, 1980, see section 2166(a) of this Appendix.

§ 2168. Cost Accounting Standards Board

REFERENCES IN TEXT

Subchapter VI of chapter 53 of title 5, referred to in subsecs. (b) and (d), was renumbered subchapter VII of chapter 53 of title 5 by Pub. L. 95–454, title VIII, § 801(a)(3)(A)(i), Oct. 13, 1978, 92 Stat. 1221.

§ 2169. National Commission on Supplies and Shortages

TERMINATION DATE

Termination of section on Jan. 28, 1980, see section 2166(a) of this Appendix.

CIVIL DEFENSE

ACT JAN. 12, 1951, CH. 1228, 64 STAT. 1245

TITLE I—GENERAL PROVISIONS

§ 2251. Congressional declaration of policy

DELEGATION OF FUNCTIONS

Functions of the Federal Civil Defense Administration or its Administrator under the Federal Civil Defense Act of 1950, as amended, section 2251 of this Appendix, which were previously transferred to the President, were delegated to the Director of the Federal Emergency Management Agency by section 4-103(a) of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43242, set out as a note below.

EXECUTIVE ORDER No. 10529

Ex. Ord. No. 10529, Apr. 23, 1954, 19 F.R. 2397, as amended by Ex. Ord. No. 10773, eff. July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, eff. Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, eff. Sept. 28, 1962, 27 F.R. 9683, which related to federal employee participation in state and local civil defense programs, was revoked by section 5-104 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out as a note below.

EX. ORD. NO. 11490. ASSIGNMENT OF EMERGENCY PREPAREDNESS FUNCTIONS TO FEDERAL AGENCIES AND DEPARTMENTS

Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567 as amended by Ex. Ord. No. 11522, Apr. 6, 1970, 35 F.R. 5659; Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193; Ex. Ord. No. 11746, Nov. 7, 1973, 38 F.R. 30991; Ex. Ord. No. 11921, June 11, 1976, 41 F.R. 24294; Ex. Ord. No. 11953, Jan. 7, 1977, 42 F.R. 2492; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

[*See main edition for text of first six pars.*]

TABLE OF CONTENTS

Part

[*See main edition for text of items 1 to 27*]

28 Office of Personnel Management.

[*See main edition for text of items 28A to 30*]

PART 1—PURPOSE AND SCOPE

[*See main edition for text of Sec. 101*]

SEC. 102 *Scope.* (a) This order is concerned with the emergency national planning and preparedness functions of the several departments and agencies of the Federal Government which complement the military readiness planning responsibilities of the Department of Defense; together, these measures provide the basic foundation for our overall national preparedness posture, and are fundamental to our ability to survive. The activities undertaken by the departments and agencies pursuant to this Order, except as provided in Section 3003, shall be in accordance with guidance provided by, and subject to, evaluation by the Director of the Federal Emergency Management Agency.

[*See main edition of text of (b) and (c)*]

SEC. 103 *General Coordination.* The Director of the Federal Emergency Management Agency (FEMA) shall determine national preparedness goals and policies for the performance of functions under this Order and coordinate the performance of such functions with the total national preparedness programs.

[*See main edition for text of Secs. 104 and 105; Parts 2 and 3*]

PART 4—DEPARTMENT OF DEFENSE

SECTION 401 *Functions.* The Secretary of Defense shall perform the following emergency preparedness functions:

[*See main edition for text of (1) and (2)*]

(3) Advise and assist Director, FEMA in developing a national system of production urgencies.

(4) Advise and assist Director, FEMA in developing a system, in conjunction with the Department of State, for the international allocation of critical materials and products among the United States and the various foreign claimants in the event of an emergency, including an attack on the United States.

(5) Plan for and administer priorities and allocations authority delegated to the Department of Defense. Authorize procurement and production schedules and make allotments of controlled materials pursuant to program determinations of Director, FEMA.

[*See main edition for text of (6) to (8)*]

(9) Recommend to Director, FEMA measures for overcoming potential deficiencies in production capacity to produce selected military supplies and equipment needed to fulfill emergency requirements, when necessary measures cannot be effected by the Department of Defense.

(10) Furnish information and recommendations, when requested by Director, FEMA, for purposes of processing applications for defense loans under Title III of the Defense Production Act of 1950, as amended [sections 2091 to 2094 of this Appendix].

[*See main edition for text of (11) to (13)*]

(14) Advise and assist Director, FEMA in the development and review of standards for the strategic location and physical security of industries, services, government, and other activities for which continuing operation is essential to national security, and exercise physical security cognizance over the facilities assigned to him for such purpose.

(15) Develop and operate damage assessment systems and assist Director, FEMA and other departments and agencies in their responsibilities as stated in Section 3002(2); participate with the Office of Emergency Preparedness in the preparation of estimates of potential damage from enemy attack.

(16) Advise and assist Director, FEMA in the development of over-all manpower policies to be instituted in the event of an emergency, including an attack on the United States, including the provision of information relating to the size and composition of the Armed Forces.

[*See main edition for text of (17) and (18)*]

(19) Assist Director, FEMA in preparation of legislative programs and plans for coordinating nonmilitary support of emergency preparedness programs.

[*See main edition for text of (20)*]

(21) Advise and assist Director, FEMA in (1) determining what key foreign facilities and operating rights thereto are important to the security of the United States, and (2) obtaining through appropriate channels protection against sabotage.

(22) Develop plans and procedures to carry out Department of Defense responsibilities stated in the National censorship Agreement between the Department of Defense and Director, FEMA.

[*See main edition for text of (23) to (26)*]

(27) Develop with the Federal Communications Commission and the National Security Council plans and programs for the emergency control of all devices capable of emitting electromagnetic radiation.

[*See main edition for text of (28) to (30)*]

PART 5—DEPARTMENT OF JUSTICE

SECTION 501. *Functions.* The Attorney General shall perform the following emergency preparedness functions:

[*See main edition for text of (1) to (7)*]

(8) *Drug Control.* Develop emergency plans and procedures for the administration of laws governing the import, manufacture, and distribution of narcotics. Consult with and render all possible aid and assistance to Director, FEMA, the Department of Health, Education, and Welfare, and the General Services Administration in the allocation, distribution, and, if necessary, the replenishment of Government stockpiles of narcotic drugs.

SEC. 502. *Civil Defense Functions.* In consonance with national civil defense programs developed by the Director of the Federal Emergency Management Agency, the Attorney General shall:

(1) *Local law enforcement.* Upon request, consult with and assist the Director of the Federal Emergency Management Agency to plan, develop, and distribute materials for use in the instruction and training of law enforcement personnel for civil defense emergency operations; develop and carry out a national plan for civil defense instruction and training for enforcement officers, designed to utilize to the maximum extent practicable the resources and facilities of existing Federal, State, and local police schools, academies, and other appropriate institutions of learning; and assist the States in preparing for the conduct of intrastate and interstate law enforcement operations to meet the extraordinary needs that would exist for emergency police services under conditions of attack or imminent attack.

[*See main edition for text of (2) and (3)*]

PART 6—UNITED STATES POSTAL SERVICE

SECTION 601 *Functions.* The Postmaster General shall prepare plans and programs for emergency mail service and shall cooperate with indicated Federal agencies, in accordance with existing agreements or directives, in the following national emergency programs:

(1) *Registering of persons.* Assist the Department of Health, Education, and Welfare in planning a national program and developing technical guidance for States, and directing Postal Service activities concerned with registering persons and families for the purpose of receiving and answering welfare inquiries and reuniting families in civil defense emergencies. The program shall include procurement, transportation, storage, and distribution of safety notification and emergency change of address cards in quantities and localities jointly determined by the Director of the Federal Emergency Management Agency and the United States Postal Service.

(2) *Other emergency programs.* (a) Censorship of international mails. (Department of Defense; Department of the Treasury; Director, FEMA)

[*See main edition for text of (b) to (e); Part 7*]

PART 8—DEPARTMENT OF AGRICULTURE

[*See main edition for text of Secs. 801 to 803*]

SEC. 804 *Civil Defense Functions.* In consonance with national civil defense programs developed by the

Director of the Federal Emergency Management Agency, the Secretary of Agriculture shall:

[*See main edition for text of (1) to (4)*]

PART 9—DEPARTMENT OF COMMERCE

[*See main edition for text of Secs. 901 to 903*]

SEC. 904 *Census Functions.* Within the area designated in section 901(4) hereof, the Secretary of Commerce shall:

[*See main edition for text of (1)*]

(2) Plan, create, and maintain a capability for the conduct of post-attack surveys to provide information on the status of surviving populations and resources as required for the programs of Director, FEMA.

[*See main edition for text of (3)*]

SEC. 905 *Civil Defense Functions.* In consonance with national civil defense programs developed by the Director of the Federal Emergency Management Agency, the Secretary of Commerce shall:

[*See main edition for text of (1)*]

(2) *Geodetic, hydrographic, and oceanographic data.* Provide geodetic, hydrographic, and oceanographic data and services to the Director of the Federal Emergency Management Agency and other governmental agencies, as appropriate.

[*See main edition for text of Sec. 906; Part 10*]

PART 11—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[*See main edition for text of Sec. 1101*]

SEC. 1102 *Definitions.* As used in this part:

[*See main edition for text of (1)*]

(2) "Health manpower" means physicians (including osteopaths); dentists; sanitary engineers; registered professional nurses; and such other occupations as may be included in the List of Health Manpower Occupations issued for the purposes of this part by the Director, FEMA after agreement by the Secretary of Labor and the Secretary of Health, Education, and Welfare.

[*See main edition for text of (3) to (7)*]

SEC. 1103 *Health Functions.* With respect to emergency health services, as defined above, and in consonance with national civil defense plans, programs, and operation of the Director of the Federal Emergency Management Agency under Executive Order No. 12148 [set out as a note below], the Secretary of Health, Education, and Welfare shall:

[*See main edition for text of (1) to (6)*]

SEC. 1104 *Welfare Functions.* With respect to emergency welfare services as defined above, and in consonance with national civil defense plans, programs, and operations of the Director of the Federal Emergency Management Agency under Executive Order No. 12148 [set out as a note below], the Secretary of Health, Education, and Welfare shall:

[*See main edition for text of (1) to (4); Sec. 1105*]

Sec. 1106 *Education Functions.* With respect to education, the Secretary of Health, Education, and Welfare shall:

[*See main edition for text of (1) to (3)*]

(4) *Civil defense education.* In consonance with national civil defense plans, programs, and operations of the Director of the Federal Emergency Management Agency, develop and issue instructional materials to assist schools, colleges, and other educational institutions to incorporate emergency protective measures and civil defense concepts into their programs. This includes assistance to various levels of education to develop an understanding of the role of the individual, family, and community for civil defense in the nuclear age.

[*See main edition for text of Sec. 1107*]

PART 12—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[*See main edition for text of Secs. 1201 to 1203*]

SEC. 1204 *Urban Development Functions.* The Secretary of Housing and Urban Development shall:

[*See main edition for text of (1)*]

(2) *Vulnerability and redevelopment.* In cooperation with Director, FEMA, develop criteria and provide guidance for the design and location of housing and community facilities related to housing to minimize the risk of loss under various emergency situations. Develop criteria for determining which areas should be redeveloped in the event of loss or severe damage resulting from emergencies.

SEC. 1205 *Civil Defense Functions.* In consonance with national civil defense plans, programs, and operations of the Director of the Federal Emergency Management Agency under Executive Order No. 12148 [set out as a note below], the Secretary of Housing and Urban Development shall:

[*See main edition for text of (1) to (3); Part 13*]

PART 14—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

SECTION 1401 *Functions.* (a) The Administrator of the Energy Research and Development Administration (ERDA) shall prepare emergency plans and develop preparedness programs for the continuing conduct of ERDA activities in any national emergency-type situation, including nuclear attack on the United States. These plans and programs shall include development of a state of readiness in those areas with respect to national emergencies which are governed by applicable provisions of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], and the Energy Reorganization Act of 1974 [42 U.S.C. 5801 et seq.], and they shall be coordinated with Director, FEMA, Department of Defense, and other departments and agencies as is appropriate.

[*See main edition for text of (b); Parts 14A to 16*]

PART 17—FEDERAL BANK SUPERVISORY AGENCIES

SECTION 1701 *Financial Plans and Programs.* The Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Home Loan Bank Board, the Farm Credit Administration, and the Federal Deposit Insurance Corporation shall participate with Director, FEMA, the Department of the Treasury, and other agencies in the formulation of emergency financial and stabilization policies. The heads of such agencies shall, as appropriate, develop emergency plans, programs, and regulations, in consonance with national emergency financial and stabilization plans and policies, to cope with potential economic effects of mobilization or an attack, including, but not limited to, the following:

[*See main edition for text of (1) to (5)*]

SEC. 1702 *Sharing of war losses.* Heads of agencies shall, as appropriate, participate with Director, FEMA and the Department of the Treasury in the development of policies, plans, and procedures for implementation of national policy on sharing war losses.

PART 18—FEDERAL COMMUNICATIONS COMMISSION

[*See main edition for text of Sec. 1801*]

SEC. 1802 *Functions.* The Federal Communications Commission shall develop policies, plans, and proce-

dures, in consonance with national telecommunications plans and policies developed pursuant to Executive Order No. 12046 [set out as a note under section 305 of Title 47, Telegraphs, Telephones, and Radiotelegraphs], Executive Order No. 12148 [set out as a note below], the Presidential Memorandum of August 21, 1963, "Establishment of the National Communications System", and other appropriate authority, covering:

[See main edition for text of (1) to (6); Part 19]

PART 20—GENERAL SERVICES ADMINISTRATION

[See main edition for text of Sec. 2001]

SEC. 2002 *Functions.* The Administrator of General Services shall:

[See main edition for text of (1) and (2)]

(3) *Communications.* Plan for and provide, operate, and maintain appropriate telecommunications facilities designed to meet the essential requirements of Federal civilian departments and agencies during an emergency within the framework of the National Communications System. Plans and programs of the Administrator shall be in consonance with national telecommunications policies, plans, and programs developed pursuant to Executive Order No. 12046 [set out as a note under section 305 of Title 47, Telegraphs, Telephones, and Radiotelegraphs], Executive Order No. 12148 [set out as a note below], and the Presidential Memorandum of August 21, 1963, "Establishment of the National Communications System," or other appropriate authority.

[See main edition for text of (4) to (7)]

(8) *Survival item stockpiles.* Assist the Department of Health, Education, and Welfare, insofar as civil defense medical stockpile items under its jurisdiction are concerned, and the Director of the Federal Emergency Management Agency, insofar as survival items under its jurisdiction are concerned, in formulating plans and programs for service activity support relating to stockpiling of such supplies and equipment. The Administrator shall arrange for the procurement, storage, maintenance, inspection, survey, withdrawal, and disposal of supplies and equipment in accordance with the provisions of interagency agreements with the departments concerned.

[See main edition for text of (9) to (11)]

SEC. 2003 *Defense Production.* The Administrator of General Services shall assist Director, FEMA in the formulation of plans and programs relating to the certification of procurement programs, subsidy payments, and plant improvement programs provided for by the Defense Production Act of 1950, as amended [section 2061 et seq. of this Appendix].

SEC. 2004 *Strategic and Critical Materials Stockpiles.* The Administrator of General Services shall assist Director, FEMA in formulating plans, programs, and reports relating to the stockpiling of strategic and critical materials. Within these plans and programs, the Administrator shall provide for the procurement (for this purpose, procurement includes upgrading, rotation, and beneficiation), storage, security, maintenance, inspection, withdrawal, and disposal of materials, supplies, and equipment.

[See main edition for text of Parts 21 to 27]

PART 28—OFFICE OF PERSONNEL MANAGEMENT

SECTION 2801 *Functions.* The Office of Personnel Management shall:

[See main edition for text of (1) to (4)]

(5) *Wage and salary stabilization.* Participate, as appropriate, with Director, FEMA and the Department of Labor in the formulation of national and regional wage and salary stabilization policies as they affect Federal civilian personnel. Within the framework of such policies, prepare plans for the implementation of such policies and controls established for employees within the executive branch of the Government, including the issuance and enforcement of necessary regulations.

[See main edition for text of (6) to (15); Parts 28A and 29]

PART 30—GENERAL PROVISIONS

SECTION 3001 *Resource Management.* In consonance with the national preparedness, security, and mobilization readiness plans, programs, and operations of Director, FEMA under Executive Order No. 12148 [set out as a note below], and subject to the provisions of the preceding parts, the head of each department and agency shall:

[See main edition for text of (1) and (2)]

(3) *Evaluation.* Assess assigned resources in order to estimate availability from all sources under an emergency situation, analyze resource availabilities in relation to estimated requirements, and develop appropriate recommendations and programs, including those necessary for the maintenance of an adequate mobilization base. Provide data and assistance before and after attack for national resource analysis purposes of Director, FEMA.

[See main edition for text of (4)]

SEC. 3002 *Facilities protection and warfare effects monitoring and reporting.* In consonance with the national preparedness, security, and mobilization readiness plans, programs, and operations of the Federal Preparedness Agency (GSA) [probably should be Director, FEMA] under Executive Order No. 12148 [set out as a note below], and with the national civil defense plans, programs, and operations of the Director of the Federal Emergency Management Agency under Executive Order No. 12148 [set out as a note below], the head of each department and agency shall:

[See main edition for text of (1)]

(2) *Warfare effects monitoring and reporting.* Maintain a capability, both at national and field levels, to estimate the effects of attack on assigned resources and to collaborate with and provide data to Director, FEMA, the Department of Defense, and other agencies, as appropriate, in verifying and updating estimates of resource status through exchanges of data and mutual assistance, and provide for the detection, identification, monitoring and reporting of such warfare effects at selected facilities under his operation or control.

[See main edition for text of (3) and (4); Sec. 3003]

SEC. 3004 *Research.* Within the framework of research policies and objectives established by Director, FEMA, the head of each department and agency shall supervise or conduct research in areas directly concerned with carrying out emergency preparedness responsibilities, designate representatives for necessary ad hoc or task force groups, and provide advice, and assistance to other agencies in planning for research in areas involving each agency's interest.

SEC. 3005 *Stockpiles.* The head of each department and agency, with appropriate emergency responsibilities, shall assist Director, FEMA in formulating and carrying out plans for stockpiling of strategic and critical materials, and survival items.

SEC. 3006 *Direct Economic Controls.* The head of each department and agency shall cooperate with Director, FEMA and the Federal financial agencies in the development of emergency preparedness measures involving emergency financial and credit measures, as well as price, rent, wage and salary stabilization, and consumer rationing programs.

[*See main edition for text of Sec. 3007*]

SEC. 3008 *Functional Guidance.* The head of each department and agency in carrying out the functions assigned to him by this order, shall be guided by the following:

(1) *National program guidance.* In consonance with the national preparedness, security, and mobilization readiness plans, programs, and operations of Director, FEMA under Executive Order No. 12148 [set out as a note below], and with the national civil defense plans, programs, and operations of the Director of the Federal Emergency Management Agency technical guidance shall be provided to State and local governments and instrumentalities thereof, to the end that all planning concerned with the functions assigned herein will be effectively coordinated. Relations with the appropriate segment of the private sector shall be maintained to foster mutual understanding of Federal emergency plans.

[*See main edition for text of (2) to (4); Sec. 3009*]

SEC. 3010 *Emergency Public Information.* In consonance with such emergency public information plans and central program decisions of Director, FEMA, and with plans, programs, and procedures established by the Director of the Federal Emergency Management Agency to provide continuity of programming for the Emergency Broadcast System, the head of each department and agency shall:

(1) Obtain and provide information as to the emergency functions or assignments of the individual department or agency for dissemination to the American people during the emergency, in accordance with arrangements made by Director, FEMA.

[*See main edition for text of (2); Secs. 3011 and 3012*]

SEC. 3013 *Transfer of Functions.* Any emergency preparedness function under this order, or parts thereof, may be transferred from one department or agency to another with the consent of the heads of the organizations involved and with the concurrence of the Director, FEMA. Any new emergency preparedness function may be assigned to the head of a department or agency by the Director, FEMA by mutual consent.

[*See main edition for text of Secs. 3014 and 3015*]

SEC. 3016. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Federal Power Commission, (b) the Energy Research and Development Administration, and (c) with respect to electric power, petroleum, gas and solid fuels, upon the Department of the Interior.

EX. ORD. NO. 12148. FEDERAL EMERGENCY MANAGEMENT

Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, as amended by Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071; Ex. Ord. No. 12156, Sept. 10, 1979, 44 F.R. 53073, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, including the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), the Disaster Relief Act of 1970, as amended (42 U.S.C. Chapter 58 note), the Disaster Relief Act of 1974 (88 Stat. 143; 42 U.S.C. 5121 et seq.), the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), Section 4 of Public Law 92-385 (86 Stat. 556), Section 43 of the Act of August 10, 1956, as amended (50 U.S.C. App. 2285), the National Security Act of 1947, as amended [see Short Title note set out under section 401 of Title 50, War and National Defense], the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 et seq.), Reorganization Plan No. 1 of 1958 [50 U.S.C. App. 2271 note], Reorganization Plan No. 1 of 1973 [50 U.S.C. App. 2271 note], the Strategic and Critical Materials Stock Piling Act, as amended (50 U.S.C. 98 et seq.), Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), and Section 301 of Title 3 of the United States Code, and in order to transfer emergency functions to the Federal Emergency Management Agency, it is hereby ordered as follows:

SECTION 1. TRANSFERS OR REASSIGNMENTS

1-1. *Transfer or Reassignment of Existing Functions.*

1-101. All functions vested in the President that have been delegated or assigned to the Defense Civil Preparedness Agency, Department of Defense, are transferred or reassigned to the Director of the Federal Emergency Management Agency.

1-102. All functions vested in the President that have been delegated or assigned to the Federal Disaster Assistance Administration, Department of Housing and Urban Development, are transferred or reassigned to the Director of the Federal Emergency Management Agency, including any of those functions redelegated or reassigned to the Department of Commerce with respect to assistance to communities in the development of readiness plans for severe weather-related emergencies.

1-103. All functions vested in the President that have been delegated or assigned to the Federal Preparedness Agency, General Services Administration, are transferred or reassigned to the Director of the Federal Emergency Management Agency.

1-104. All functions vested in the President by the Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 et seq.), including those functions performed by the Office of Science and Technology Policy, are delegated, transferred, or reassigned to the Director of the Federal Emergency Management Agency.

1-2. *Transfer or Reassignment of Resources.*

1-201. The records, property, personnel and positions, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, reassigned, or redelegated by this Order are hereby transferred to the Director of the Federal Emergency Management Agency.

1-202. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

SEC. 2. MANAGEMENT OF EMERGENCY PLANNING AND ASSISTANCE

2-1. *General.*

2-101. The Director of the Federal Emergency Management Agency shall establish Federal policies for, and coordinate, all civil defense and civil emergency planning, management, mitigation, and assistance functions of Executive agencies.

2-102. The Director shall periodically review and evaluate the civil defense and civil emergency functions of the Executive agencies. In order to improve the efficiency and effectiveness of those functions, the Director shall recommend to the President alternative methods of providing Federal planning, management, mitigation, and assistance.

2-103. The Director shall be responsible for the coordination of efforts to promote dam safety, for the coordination of natural and nuclear disaster warning systems, and for the coordination of preparedness and planning to reduce the consequences of major terrorist incidents.

2-104. The Director shall represent the President in working with State and local governments and private sector to stimulate vigorous participation in civil emergency preparedness, mitigation, response, and recovery programs.

2-105. The Director shall provide an annual report to the President for subsequent transmittal to the Congress on the functions of the Federal Emergency Management Agency. The report shall assess the cur-

rent overall state of effectiveness of Federal civil defense and civil emergency functions, organizations, resources, and systems and recommend measures to be taken to improve planning, management, assistance, and relief by all levels of government, the private sector, and volunteer organizations.

2-2. *Implementation.*

2-201. In executing the functions under this Order, the Director shall develop policies which provide that all civil defense and civil emergency functions, resources, and systems of Executive agencies are:

(a) founded on the use of existing organizations, resources, and systems to the maximum extent practicable;

(b) integrated effectively with organizations, resources, and programs of State and local governments, the private sector and volunteer organizations; and

(c) developed, tested and utilized to prepare for, mitigate, respond to and recover from the effects on the population of all forms of emergencies.

2-202. Assignments of civil emergency functions shall, whenever possible, be based on extensions (under emergency conditions) of the regular missions of the Executive agencies.

2-203. For purposes of this Order, "civil emergency" means any accidental, natural, man-caused, or wartime emergency or threat thereof, which causes or may cause substantial injury or harm to the population or substantial damage to or loss of property.

2-204. In order that civil defense planning continues to be fully compatible with the Nation's overall strategic policy, and in order to maintain an effective link between strategic nuclear planning and nuclear attack preparedness planning, the development of civil defense policies and programs by the Director of the Federal Emergency Management Agency shall be subject to oversight by the Secretary of Defense and the National Security Council.

2-205. To the extent authorized by law and within available resources, the Secretary of Defense shall provide the Director of the Federal Emergency Management Agency with support for civil defense programs in the areas of program development and administration, technical support, research, communications, transportation, intelligence, and emergency operations.

2-206. All Executive agencies shall cooperate with and assist the Director in the performance of his functions.

2-3. *Transition Provisions.*

2-301. The functions which have been transferred, reassigned, or redelegated by Section 1 of this Order are recodified and revised as set forth in this Order at Section 4, and as provided by the amendments made at Section 5 to the provisions of other Orders.

2-302. Notwithstanding the revocations, revisions, codifications, and amendments made by this Order, the Director may continue to perform the functions transferred to him by Section 1 of this Order, except where they may otherwise be inconsistent with the provisions of this Order.

SEC. 3. FEDERAL EMERGENCY MANAGEMENT COUNCIL

3-1. *Establishment of the Council.*

3-101. There is hereby established the Emergency Management Council.

3-102. The Council shall be composed of the Director of the Federal Emergency Management Agency, who shall be the Chairman, the Director of the Office of Management and Budget and such others as the President may designate.

3-2. *Functions of the Council.*

3-201. The Council shall advise and assist the President in the oversight and direction of Federal emergency programs and policies.

3-202. The Council shall provide guidance to the Director of the Federal Emergency Management Agency in the performance of functions vested in him.

3-3. *Administrative and General Provisions.*

3-301. The heads of Executive agencies shall cooperate with and assist the Council in the performance of its functions.

3-302. The Director of the Federal Emergency Management Agency shall provide the Council with such administrative services and support as may be necessary or appropriate.

SEC. 4. DELEGATIONS

4-1. *Delegation of Functions Transferred to the President.*

4-101. [Revoked by Ex. Ord. No. 12155, Sept. 10, 1979, 44 F.R. 53071.]

4-102. The functions vested in the Director of the Office of Defense Mobilization by Sections 103 and 303 of the National Security Act of 1947, as amended by Sections 8 and 50 of the Act of September 3, 1954 (Public Law 779; 68 Stat. 1228 and 1244) (50 U.S.C. 404 and 405), were transferred to the President by Section 1(a) of Reorganization Plan No. 1 of 1958, as amended (50 U.S.C. App. 2271 note), and they are hereby delegated to the Director of the Federal Emergency Management Agency.

4-103. (a) The functions vested in the Federal Civil Defense Administration or its Administrator by the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2251 et seq.), were transferred to the President by Reorganization Plan No. 1 of 1958, and they are hereby delegated to the Director of the Federal Emergency Management Agency.

(b) Excluded from the delegation in subsection (a) is the function under Section 205(a)(4) of the Federal Civil Defense Act of 1950, as amended (50 U.S.C. App. 2286(a)(4)), relating to the establishment and maintenance of personnel standards on the merit basis that was delegated to the Director of the Office of Personnel Management by Section 1(b) of Executive Order No. 11589, as amended (Section 2-101(b) of Executive Order No. 12107) [5 U.S.C. 3376 note].

4-104. The Director of the Federal Emergency Management Agency is authorized to redelegate, in accord with the provisions of Section 1(b) of Reorganization Plan No. 1 of 1958 (50 U.S.C. App. 2271 note), any of the functions delegated by Sections 4-101, 4-102, and 4-103 of this Order.

4-105. The functions vested in the Administrator of the Federal Civil Defense Administration by Section 43 of the Act of August 10, 1956 (70A Stat. 636) [50 U.S.C. App. 2285], were transferred to the President by Reorganization Plan No. 1 of 1958, as amended (50 U.S.C. App. 2271 note), were subsequently revested in the Director of the Office of Civil and Defense Mobilization by Section 512 of Public Law 86-500 (50 U.S.C. App. 2285) [the office was changed to Office of Emergency Planning by Public Law 87-296 (75 Stat. 630) and then to the Office of Emergency Preparedness by Section 402 of Public Law 90-608 (82 Stat. 1194)], were again transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note), and they are hereby delegated to the Director of the Federal Emergency Management Agency.

4-106. The functions vested in the Director of the Office of Emergency Preparedness by Section 16 of the Act of September 23, 1950, as amended (20 U.S.C. 646), and by Section 7 of the Act of September 30, 1950, as amended (20 U.S.C. 241-1), were transferred to the President by Section 1 of Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note), and they are hereby delegated to the Director of the Federal Emergency Management Agency.

4-107. That function vested in the Director of the Office of Emergency Preparedness by Section 762(a) of the Higher Education Act of 1965, as added by Section 161(a) of the Education Amendments of 1972, and as further amended (20 U.S.C. 1132d-1(a)), to the extent transferred to the President by Reorganization Plan No. 1 of 1973 (50 U.S.C. App. 2271 note), is hereby delegated to the Director of the Federal Emergency Management Agency.

4-2. *Delegation of Functions Vested in the President.*

4-201. The functions vested in the President by the Disaster Relief Act of 1970, as amended (42 U.S.C. Chapter 58 note), are hereby delegated to the Director of the Federal Emergency Management Agency.

4-202. The functions (related to grants for damages resulting from hurricane and tropical storm Agnes) vested in the President by Section 4 of Public Law 92-335 (86 Stat. 556) are hereby delegated to the Director of the Federal Emergency Management Agency.

4-203. The functions vested in the President by the Disaster Relief Act of 1974 (88 Stat. 143; 42 U.S.C. 5121 et seq.), except those functions vested in the President by Sections 301 (relating to the declaration of emergencies and major disasters) [42 U.S.C. 5141], 401 (relating to the repair, reconstruction, restoration, or replacement of Federal facilities) [42 U.S.C. 5171], and 409 (relating to food coupons and surplus commodities) [42 U.S.C. 5179], are hereby delegated to the Director of the Federal Emergency Management Agency.

4-204. The functions vested in the President by the Earthquake Hazards Reduction Act of 1977 (91 Stat. 1098; 42 U.S.C. 7701 et seq.) are hereby delegated to the Director of the Federal Emergency Management Agency.

4-205. Effective July 30, 1979, the functions vested in the President by Section 4(h) of the Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714b(h)), are hereby delegated to the Director of the Federal Emergency Management Agency.

4-206. Effective July 30, 1979, the functions vested in the President by Section 204(f) of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 485(f)), are hereby delegated to the Director of the Federal Emergency Management Agency.

SEC. 5. OTHER EXECUTIVE ORDERS

5-1. *Revocations*

5-101. Executive Order No. 10242, as amended, entitled "Prescribing Regulations Governing the Exercise by the Federal Civil Defense Administrator of Certain Administrative Authority Granted by the Federal Civil Defense Act of 1950" [50 U.S.C. App. 2253 note], is revoked.

5-102. Sections 1 and 2 of Executive Order No. 10296, as amended, entitled "Providing for the Performance of Certain Defense Housing and Community Facilities and Service Functions" [42 U.S.C. 1592m note], are revoked.

5-103. Executive Order No. 10494, as amended, relating to the disposition of remaining functions [50 U.S.C. App. 2101 note], is revoked.

5-104. Executive Order No. 10529, as amended, relating to federal employee participation in State and local civil defense programs [set out as a note above], is revoked.

5-105. Section 3 of Executive Order No. 10601, as amended, which concerns the Commodity Set Aside [7 U.S.C. 1743 note], is revoked.

5-106. Executive Order No. 10634, as amended, relating to loans for facilities destroyed or damaged by a major disaster [50 U.S.C. App. 2092 note], is revoked.

5-107. Section 4(d)(2) of Executive Order No. 10900, as amended, which concerns foreign currencies made available to make purchases for the supplemental stockpile [7 U.S.C. 1691 note], is revoked.

5-108. Executive Order No. 10952, as amended, entitled "Assigning Civil Defense Responsibilities to the Secretary of Defense and Others" [50 U.S.C. App. 2271 note], is revoked.

5-109. Executive Order No. 11051, as amended, relating to responsibilities of the Office of Emergency Preparedness [50 U.S.C. 2271 note], is revoked.

5-110. Executive Order No. 11415, as amended, relating to the Health Resources Advisory Committee [50 U.S.C. App. 454 note], is revoked.

5-111. Executive Order No. 11795, as amended, entitled "Delegating Disaster Relief Functions Pursuant to the Disaster Relief Act of 1974" [42 U.S.C. 5121 note], is revoked, except for Section 3 thereof.

5-112. Executive Order No. 11725, as amended, entitled "Transfer of Certain Functions of the Office of Emergency Preparedness" [50 U.S.C. App. 2171 note], is revoked.

5-113. Executive Order No. 11749, as amended, entitled "Consolidating Disaster Relief Functions Assigned to the Secretary of Housing and Urban Development" [42 U.S.C. 5121 note] is revoked.

5-2. *Amendments*

5-201. Executive Order No. 10421, as amended, relating to physical security of defense facilities [50 U.S.C. 404 note] is further amended by (a) substituting the "Director of the Federal Emergency Management Agency" for "Director of the Office of Emergency Planning" in Sections 1(a), 1(c), and 6(b); and, (b) substituting "Federal Emergency Management Agency" for "Office of Emergency Planning" in Sections 6(b) and 7(b).

5-202. Executive Order No. 10480, as amended [50 U.S.C. App. 2153 note], is further amended by (a) substituting "Director of the Federal Emergency Management Agency" for "Director of the Office of Emergency Planning" in Sections 101(a), 101(b), 201(a), 201(b), 301, 304, 307, 308, 310(b), 311(b), 312, 313, 401(b), 401(e), and 605; and, (b) substituting "Director of the Federal Emergency Management Agency" for "Administrator of General Services" in Section 610.

5-203. Section 3(d) of Executive Order No. 10582, as amended, which relates to determinations under the Buy American Act [41 U.S.C. 10d note] is amended by deleting "Director of the Office of Emergency Planning" and substituting therefor "Director of the Federal Emergency Management Agency".

5-204. Paragraph 21 of Executive Order No. 10789, as amended [50 U.S.C. 1431 note], is further amended by adding "The Federal Emergency Management Agency" after "Government Printing Office".

5-205. Executive Order No. 11179, as amended, concerning the National Defense Executive Reserve [50 U.S.C. App. 2153 note], is further amended by deleting "Director of the Office of Emergency Planning" in Section 2 and substituting therefor "Director of the Federal Emergency Management Agency".

5-206. Section 7 of Executive Order No. 11912, as amended, concerning energy policy and conservation [42 U.S.C. 6201 note], is further amended by deleting "Administrator of General Services" and substituting therefor "Director of the Federal Emergency Management Agency".

5-207. Section 2(d) of Executive Order No. 11988 entitled "Floodplain Management" [42 U.S.C. 4321 note] is amended by deleting "Federal Insurance Administration" and substituting therefor "Director of the Federal Emergency Management Agency".

5-208. Section 5-3 of Executive Order No. 12046 of March 29, 1978 [47 U.S.C. 305 note], is amended by deleting "General Services Administration" and substituting therefor "Federal Emergency Management Agency" and by deleting "Administrator of General Services" and substituting therefor "Director of the Federal Emergency Management Agency".

5-209. Section 1-201 of Executive Order No. 12065 [50 U.S.C. 401 note] is amended by adding "The Director of the Federal Emergency Management Agency" after "The Administrator, National Aeronautics and Space Administration" and by deleting "Director, Federal Preparedness Agency and to the" from the parentheses after "The Administrator of General Services".

5-210. Section 1-102 of Executive Order No. 12075 of August 16, 1978 [42 U.S.C. 1450 note], is amended by adding in alphabetical order "(p) Federal Emergency Management Agency".

5-211. Section 1-102 of Executive Order No. 12083 of September 27, 1978 [42 U.S.C. 7101 note] is amended by adding in alphabetical order "(z) the Director of the Federal Emergency Management Agency".

5-212. Section 9.11(b) of Civil Service Rule IX (5 CFR Part 9) [5 U.S.C. 3301 note] is amended by deleting "the Defense Civil Preparedness Agency and".

5-213. Section 3(2) of each of the following described Executive orders is amended by adding "Federal

Emergency Management Agency" immediately after "Department of Transportation".

(a) Executive Order No. 11331 establishing the Pacific Northwest River Basins Commission [42 U.S.C. 1962b note].

(b) Executive Order No. 11345, as amended, establishing the Great Lakes Basin Commission [42 U.S.C. 1962b note].

(c) Executive Order No. 11371, as amended, establishing the New England River Basins Commission [42 U.S.C. 1962b note].

(d) Executive Order No. 11578, as amended, establishing the Ohio River Basin Commission [42 U.S.C. 1962b note].

(e) Executive Order No. 11658, as amended, establishing the Missouri River Basin Commission [42 U.S.C. 1962b note].

(f) Executive Order No. 11659, as amended, establishing the Upper Mississippi River Basin Commission [42 U.S.C. 1962b note].

5-214. Executive Order No. 11490, as amended [set out as a note above] is further amended as follows:

(a) Delete the last sentence of Section 102(a) and substitute therefor the following: "The activities undertaken by the departments and agencies pursuant to this Order, except as provided in Section 3003, shall be in accordance with guidance provided by, and subject to, evaluation by the Director of the Federal Emergency Management Agency.".

(b) Delete Section 103 entitled "Presidential Assistance" and substitute the following new Section 103: *"Sec. 103 General Coordination.* The Director of the Federal Emergency Management Agency (FEMA) shall determine national preparedness goals and policies for the performance of functions under this Order and coordinate the performance of such functions with the total national preparedness programs.".

(c) Delete the portion of the first sentence of Section 401 prior to the colon and insert the following: "The Secretary of Defense shall perform the following emergency preparedness functions".

(d) Delete "Director of the Federal Preparedness Agency (GSA)" or "the Federal Preparedness Agency (GSA)" and substitute therefor "Director, FEMA", in Sections 401(3), 401(4), 401(5), 401(9), 401(10), 401(14), 401(15), 401(16), 401(19), 401(21), 401(22), 501(8), 601(2), 904(2), 1102(2), 1204(2), 1401(a), 1701, 1702, 2003, 2004, 2801(5), 3001, 3002(2), 3004, 3005, 3006, 3008, 3010, and 3013.

(e) The number assigned to this Order shall be substituted for "11051 of September 27, 1962" in Section 3001, and for "11051" in Sections 1802, 2002(3), 3002 and 3008(1).

(f) The number assigned to this Order shall be substituted for "10952" in Sections 1103, 1104, 1205, and 3002.

(g) Delete "Department of Defense" in Sections 502, 601(1), 804, 905, 1103, 1104, 1106(4), 1205, 2002(8), the first sentence of Section 3002, and Sections 3008(1) and 3010 and substitute therefor "Director of the Federal Emergency Management Agency.".

SEC. 6.

This Order is effective July 15, 1979.

JIMMY CARTER.

§ 2253. Administrative authority

DELEGATION OF FUNCTIONS

Functions of the Federal Civil Defense Administration or its Administrator under the Federal Civil Defense Act of 1950, as amended, section 2251 et seq. of this Appendix, which previously were transferred to the President were delegated to the Director of the Federal Emergency Management Agency by section 4-103(a) of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43242, set out as a note under section 2251 of this Appendix.

EXECUTIVE ORDER NO. 10242

Ex. Ord. No. 10242, May 8, 1951, 16 F.R. 4267, as amended by Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 28, 1962, 27 F.R. 9683; Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, formerly set out as a note under this section, which related to regulations governing exercise of certain administrative authority, was revoked by section 5-101 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out as a note under section 2251 of this Appendix.

§ 2255. Security regulations; oath

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

DELEGATION OF FUNCTIONS

Functions of the Federal Civil Defense Administration or its Administrator under the Federal Civil Defense Act of 1950, as amended, section 2251 et seq. of this Appendix, which previously were transferred to the President were delegated to the Director of the Federal Emergency Management Agency by section 4-103(a) of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43242, set out as a note under section 2251 of this Appendix.

§§ 2256 to 2258

DELEGATION OF FUNCTIONS

Functions of the Federal Civil Defense Administration or its Administrator under the Federal Civil Defense Act of 1950, as amended, section 2251 et seq. of this Appendix, which previously were transferred to the President were delegated to the Director of the Federal Emergency Management Agency by section 4-103(a) of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43242, set out as a note under section 2251 of this Appendix.

§ 2260. Appropriations and transfers of funds

There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act [sections 2251 to 2297 of this Appendix] in the fiscal year ending September 30, 1977. No funds may be appropriated for any fiscal year beginning after September 30, 1977, for carrying out the purpose of this Act [said sections], unless such funds have been authorized for such purpose by legislation enacted after the date of enactment of the Department of Defense Appropriations Authorization Act, 1977 [July 14, 1976]. Funds made available for the purposes of this Act [said sections] may be allocated or transferred for any of the purposes of this Act [said sections], with the approval of the Bureau of the Budget, to any agency or Government corporation designated to assist in carrying out this Act [said sections]: *Provided,* That each such allocation or transfer shall be reported in full detail to the Congress within thirty days after such allocation or transfer: *Provided further,* That appropriations for the payment of travel and per diem expenses for students under section 201(e) [section 2281(e) of this Appendix] shall not exceed $300,000 per

annum; appropriations for expenditures under the fourth proviso of section 201(h) [section 2281(h) of this Appendix] (donation of radiological instruments, et cetera) shall not exceed $35,000,000 per annum; appropriations for contribution to the States for personal equipment for State and local workers, under section 201(i) [section 2281(i) of this Appendix] shall not exceed $2,000,000 per annum; and appropriations for contributions to the States for personnel and administrative expenses under section 205 [section 2286 of this Appendix] shall not exceed $40,000,000 per annum.

(As amended Nov. 9, 1979, Pub. L. 96-107, title VII, § 702, 93 Stat. 810.)

AMENDMENTS

1979—Pub. L. 96-107 increased appropriations for personnel and administrative expenses from not to exceed $35,000,000 per annum to not to exceed $40,000,000 per annum.

§ 2261. Loans from Reconstruction Finance Corporation; increase in loan authority of Reconstruction Finance Corporation

DELEGATION OF FUNCTIONS

Functions of the Federal Civil Defense Administration or its Administrator under the Federal Civil Defense Act of 1950, as amended, section 2251 et seq. of this Appendix, which previously were transferred to the President were delegated to the Director of the Federal Emergency Management Agency by section 4-103(a) of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43242, set out as a note under section 2251 of this Appendix.

§ 2264. Establishment of "Civil defense procurement fund"; uses; charges against fund

DELEGATION OF FUNCTIONS

Functions of the Federal Civil Defense Administration or its Administrator under the Federal Civil Defense Act of 1950, as amended, section 2251 et seq. of this Appendix, which previously were transferred to the President were delegated to the Director of the Federal Emergency Management Agency by section 4-103(a) of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43242, set out as a note under section 2251 of this Appendix.

TITLE II—ORGANIZATION OF ADMINISTRATION

§ 2271. Federal Civil Defense Administration

TRANSFER OF FUNCTIONS

The Office of Telecommunications Policy, referred to in section 306 of Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, set out under this section in the main edition, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President, and the functions of the Office and the Director thereof were transferred to the Secretary of Commerce by section 5B of Reorg. Plan No. 1 of 1977, except for those functions of the Office and the Director thereof relating to the preparation of Presidential telecommunications policy operations and the disposition of appeals from assignments of radio frequencies to stations of the United States government, which were transferred to the President by said section 5B of Reorg. Plan No. 1 of 1977 with power to delegate within the Executive Office of the President.

DELEGATION OF FUNCTIONS

Functions of the Federal Civil Defense Administration or its Administrator under the Federal Civil Defense Act of 1950, as amended, section 2251 et seq. of this Appendix, which previously were transferred to the President were delegated to the Director of the Federal Emergency Management Agency by section 4-103(a) of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43242, set out as a note under section 2251 of this Appendix.

EXECUTIVE ORDER No. 10952

Ex. Ord. No. 10952, July 20, 1961, 26 F.R. 6577, as amended by Ex. Ord. No. 11051, Sept. 28, 1962, 27 F.R. 9683, which related to the assignment of civil defense responsibilities, was revoked by section 5-108 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out as a note under section 2251 of this Appendix.

EXECUTIVE ORDER No. 11051

Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683, as amended by Ex. Ord. No. 11075, Jan. 16, 1963, 28 F.R. 473; Ex. Ord. No. 11556, Sept. 4, 1970, 35 F.R. 14193; Ex. Ord. No. 11725, June 27, 1973, 38 F.R. 17175; Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, which related to responsibility of the Office of Emergency Preparedness, was revoked by section 5-109 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out as a note under section 2251 of this Appendix.

EXECUTIVE ORDER No. 11725

Ex. Ord. No. 11725, June 27, 1973, 38 F.R. 17175, as amended by Ex. Ord. No. 11749, Dec. 10, 1973, 38 F.R. 34177; Ex. Ord. No. 12046, Mar. 27, 1978, 43 F.R. 13349, which related to transfer of certain functions of the Office of Emergency Preparedness, was revoked by section 5-112 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43243, set out as a note under section 2251 of this Appendix.

TITLE III—POWERS AND DUTIES

§ 2281. Functions of Administration

DELEGATION OF FUNCTIONS

Functions of the Federal Civil Defense Administration or its Administrator under the Federal Civil Defense Act of 1950, as amended, section 2251 et seq. of this Appendix, which previously were transferred to the President were delegated to the Director of the Federal Emergency Management Agency by section 4-103(a) of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43242, set out as a note under section 2251 of this Appendix.

STUDY ON SPECIAL DEFENSE NEEDS OF AREAS CONTAINING STRATEGIC NUCLEAR RETALIATORY FORCES OR SIGNIFICANT DEFENSE RELATED RESEARCH LABORATORIES OR FACILITIES

Pub. L. 95-485, title VII, § 702, Oct. 20, 1978, 92 Stat. 1618, which provided that $200,000 be used for a study of the special defense needs of areas of the United States which contain significant elements of the United States strategic nuclear retaliatory forces or significant defense-related research laboratories or facilities and required the study to be completed and copies filed with the Committees on Armed Services of the Senate and House of Representatives, before Apr. 1, 1979, was omitted from the Code as executed.

§§ 2283, 2284

DELEGATION OF FUNCTIONS

Functions of the Federal Civil Defense Administration or its Administrator under the Federal Civil Defense Act of 1950, as amended, section 2251 et seq. of this Appendix, which previously were transferred to the President were delegated to the Director of the

Federal Emergency Management Agency by section 4-103(a) of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43242, set out as a note under section 2251 of this Appendix.

§ 2285. Real property transactions

DELEGATION OF FUNCTIONS

Functions of the Administrator of the Federal Civil Defense Administration under this section, which previously were transferred to the President were delegated to the Director of the Federal Emergency Management Agency by section 4-105 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43242, set out as a note under section 2251 of this Appendix.

§ 2286. Financial contributions to States for personnel and administrative expenses

DELEGATION OF FUNCTIONS

Functions of the President under subsec. (a)(4) of this section delegated to the Director of the Office of Personnel Management, see sections 1(b) and 2 of Ex. Ord. No. 11589, Apr. 1, 1971, 36 F.R. 6343, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1057, set out as a note under section 3376 of Title 5, Government Organization and Employees.

Functions of the Federal Civil Defense Administration or its Administrator under the Federal Civil Defense Act of 1950, as amended, section 2251 et seq. of this Appendix, which previously were transferred to the President, with the exception of the function under subsec. (a)(4) of this section, relating to the establishment and maintenance of personnel standards on the merit basis which previously was delegated to the Director of the Office of Personnel Management, were delegated to the Director of the Federal Emergency Management Agency by section 4-103 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43242, set out as a note under section 2251 of this Appendix.

EMERGENCY FOOD AID TO INDIA

ACT JUNE 15, 1951, CH. 138, 65 STAT. 69

§ 2316. Use of repayment funds; limitation

TRANSFER OF FUNCTIONS

All functions vested in the President, the Secretary of State, the Department of State, the United States Information Agency, or the Director thereof under this section were transferred to the Director of the International Communication Agency by Reorg. Plan No. 2 of 1977, § 7(a)(11), 42 F.R. 62461, 91 Stat. 1637, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before July 1, 1978, at such time as specified by the President.

EXPORT REGULATION [NEW]

PUB. L. 96-72, SEPT. 29, 1979, 93 STAT. 503

Sec.

2401. Congressional findings.
2402. Congressional declaration of policy.
2403. General provisions.
(a) Types of licenses.
(b) Commodity control list.
(c) Foreign availability.
(d) Right of export.
(e) Delegation of authority.
(f) Notification of the public; consultation with business.
2403-1. Exports to controlled countries of goods, technology, and industrial techniques developed by funds authorized for Department of Defense.
(a) Congressional findings and declaration of purpose; notice to Secretary of Defense of proposed export; review authorization.
(b) Review and assessment of export application.
(c) Recommendation to President by Secretary of Defense for disapproval of export application; Presidential statement to Congress disagreeing with Secretary's recommendation for disapproval of export application; approval of export application subsequent to Presidential statement.
(d) Definitions.
(e) Report to Congress by Secretary of Defense; contents.
2403-1a. Omitted.
2403a. Omitted.
2404. National security controls.
(a) Authority.
(b) Policy toward individual countries.
(c) Control list.
(d) Militarily critical technologies.
(e) Export licenses.
(f) Foreign availability.
(g) Indexing.
(h) Technical advisory committees.
(i) Multilateral export controls.
(j) Commercial agreements with certain countries.
(k) Negotiations with other countries.
(l) Diversion to military use of controlled goods or technology.
2405. Foreign policy controls.
(a) Authority.
(b) Criteria.
(c) Consultation with industry.
(d) Alternative means.
(e) Notification to Congress.
(f) Exclusion for medicine and medical supplies.
(g) Foreign availability.
(h) International obligations.
(i) Countries supporting international terrorism.
(j) Crime control instruments.
(k) Control list.
2406. Short supply controls.
(a) Authority.
(b) Monitoring.
(c) Petitions for monitoring or controls.
(d) Domestically produced crude oil.
(e) Refined petroleum products.
(f) Certain petroleum products.
(g) Agricultural commodities.
(h) Barter agreements.
(i) Unprocessed red cedar.
(j) Export of horses.
2407. Foreign boycotts.
(a) Prohibitions and exceptions.
(b) Foreign policy controls.
(c) Preemption.
2408. Procedures for hardship relief from export controls.
(a) Filing of petitions.
(b) Decision of the Secretary.
(c) Factors to be considered.
2409. Procedures for processing export license applications.
(a) Primary responsibility of the Secretary.
(b) Initial screening.
(c) Action on certain applications.
(d) Referral to other departments and agencies.
(e) Action by other departments and agencies.
(f) Action by the Secretary.
(g) Special procedures for Secretary of Defense.

Sec.

(h) Multilateral controls.
(i) Records.
(j) Appeal and court action.
2410. Violations.
(a) In general.
(b) Willful violations.
(c) Civil penalties administrative sanctions.
(d) Payment of penalties.
(e) Refunds.
(f) Actions for recovery of penalties.
(g) Other authorities.
2411. Enforcement.
(a) General authority.
(b) Immunity.
(c) Confidentiality.
(d) Reporting requirements.
(e) Simplification of regulations.
2411a. Omitted.
2412. Exemption from certain provisions relating to administrative procedure and judicial review.
(a) Exemption.
(b) Public participation.
2413. Annual report.
(a) Contents.
(b) Report on certain export controls.
(c) Report on negotiations.
2414. Regulatory authority.
2415. Definitions.
2416. Effect on other Acts.
(a) In general.
(b) Coordination of controls.
(c) Civil aircraft equipment.
(d) Nonproliferation controls.
(e) Termination of other authority.
2417. Authorization of appropriations.
(a) Requirement of authorizing legislation.
(b) Authorization.
2418. Effective date.
(a) Effective date.
(b) Issuance of regulations.
2419. Termination date.
2420. Savings provision.
(a) In general.
(b) Administrative proceedings.

ACT REFERRED TO IN OTHER SECTIONS

This Act is referred to in title 22 section 2778; title 42 section 6212.

§ 2401. Congressional findings

The Congress makes the following findings:

(1) The ability of United States citizens to engage in international commerce is a fundamental concern of United States policy.

(2) Exports contribute significantly to the economic well-being of the United States and the stability of the world economy by increasing employment and production in the United States, and by strengthening the trade balance and the value of the United States dollar, thereby reducing inflation. The restriction of exports from the United States can have serious adverse effects on the balance of payments and on domestic employment, particularly when restrictions applied by the United States are more extensive than those imposed by other countries.

(3) It is important for the national interest of the United States that both the private sector and the Federal Government place a high priority on exports, which would strengthen the Nation's economy.

(4) The availability of certain materials at home and abroad varies so that the quantity and composition of United States exports and their distribution among importing countries may affect the welfare of the domestic economy and may have an important bearing upon fulfillment of the foreign policy of the United States.

(5) Exports of goods or technology without regard to whether they make a significant contribution to the military potential of individual countries or combinations of countries may adversely affect the national security of the United States.

(6) Uncertainty of export control policy can curtail the efforts of American business to the detriment of the overall attempt to improve the trade balance of the United States.

(7) Unreasonable restrictions on access to world supplies can cause worldwide political and economic instability, interfere with free international trade, and retard the growth and development of nations.

(8) It is important that the administration of export controls imposed for national security purposes give special emphasis to the need to control exports of technology (and goods which contribute significantly to the transfer of such technology) which could make a significant contribution to the military potential of any country or combination of countries which would be detrimental to the national security of the United States.

(9) Minimization of restrictions on exports of agricultural commodities and products is of critical importance to the maintenance of a sound agricultural sector, to achievement of a positive balance of payments, to reducing the level of Federal expenditures for agricultural support programs, and to United States cooperation in efforts to eliminate malnutrition and world hunger.

(Pub. L. 96–72, § 2, Sept. 29, 1979, 93 Stat. 503.)

PRIOR PROVISIONS

A prior section 2401, Pub. L. 91–184, § 2, Dec. 30, 1969, 83 Stat. 841; Pub. L. 92–412, title I, § 102, Aug. 29, 1972, 86 Stat. 644; Pub. L. 93–500, § 4(a), Oct. 29, 1974, 88 Stat. 1553, setting forth the findings of Congress with respect to the Export Administration Act of 1969, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

SHORT TITLE

Section 1 of Pub. L. 96–72 provided that: "This Act [which enacted sections 2401 to 2420 of this Appendix, amended section 1732 of Title 7, Agriculture, sections 2778 and 3108 of Title 22, Foreign Relations and Intercourse, section 993 of Title 26, Internal Revenue Code, and sections 6212 and 6274 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 2406 and 2409 of this Appendix and section 3108 of Title 22] may be cited as the 'Export Administration Act of 1979'."

EXECUTIVE ORDER NO. 11753

Ex. Ord. No. 11753, Dec. 20, 1973, 38 F.R. 34983, formerly set out as a note under this section, which established the President's Export Council, was revoked by section 1-402 of Ex. Ord. No. 12131, May 4, 1979, 44 F.R. 26842, set out as a note below.

EXTENSION OF TERM OF PRESIDENT'S EXPORT COUNCIL

Term of the President's Export Council, established by Ex. Ord. No. 11753, extended until Dec. 31, 1980, see Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under section 14 of Appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 12131. PRESIDENT'S EXPORT COUNCIL

Ex. Ord. No. 12131, May 4, 1979, 44 F.R. 26841, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to expand the membership of the President's Export Council, in accord with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), it is hereby ordered as follows:

1-1. ESTABLISHMENT AND MEMBERSHIP

1-101. There is established the President's Export Council.

1-102. The membership of the Council shall be as follows:

(a) The heads of the following Executive agencies or their representatives:

(1) Department of State.

(2) Department of the Treasury.

(3) Department of Agriculture.

(4) Department of Commerce.

(5) Department of Labor.

(6) Office of the Special Representative for Trade Negotiations.

(7) Export-Import Bank of the United States.

(b) Three members of the United States Senate, designated by the President of the Senate, and three members of the United States House of Representatives designated by the Speaker of the House.

(c) Not to exceed 28 citizens appointed by the President. These individuals shall be selected from those who are not full-time Federal officers or employees. They shall include representatives of business and industry, agriculture, and labor.

1-103. The President shall designate a Chairman and a Vice Chairman from among the members appointed by the President.

1-104. The Secretary of Commerce, with the concurrence of the Chairman, shall appoint an Executive Director.

1-2. FUNCTIONS

1-201. The Council shall serve as a national advisory body on matters relating to United States export trade, including advice on the implementation of the President's National Export Policy, which was announced on September 26, 1978. It shall, through the Secretary of Commerce, report to the President on its activities and on its recommendations for expanding United States exports.

1-202. The Council should survey and evaluate the export expansion activities of the communities represented by the membership. It should identify and examine specific problems which business, industrial, and agricultural practices may cause for export trade, and examine the needs of business, industry, and agriculture to expand their efforts. The Council should recommend specific solutions to these problems and needs.

1-203. The Council may act as liaison among the communities represented by the membership; and, may provide a forum for those communities on current and emerging problems and issues in the field of export expansion. The Council should encourage the business, industrial, and agricultural communities to enter new foreign markets and to expand existing export programs.

1-204. The Council shall provide advice on Federal plans and actions that affect export expansion policies which have an impact on those communities represented by the membership.

1-205. The Council may establish, with the concurrence of the Secretary of Commerce, an executive committee and such other subordinate committees it considers necessary for the performance of its functions. The Chairman of a subordinate committee shall be designated, with the concurrence of the Secretary of Commerce, by the Chairman of the Council from among the membership of the Council. Members of subordinate committees shall be appointed by the Secretary of Commerce.

1-3. ADMINISTRATIVE PROVISIONS

1-301. The Secretary of Commerce shall, to the extent permitted by law, provide the Council, including its executive and subordinate committees, with administrative and staff services, support and facilities as may be necessary for the effective performance of its functions.

1-302. Each member of the Council, including its executive and subordinate committees, who is not otherwise paid a salary by the Federal Government, shall receive no compensation from the United States by virtue of their service on the Council, but all members may receive the transportation and travel expenses, including per diem in lieu of subsistence, authorized by law (5 U.S.C. 5702 and 5703).

1-4. GENERAL PROVISIONS

1-401. Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App.), except that of reporting annually to the Congress, which are applicable to the Council, shall be performed by the Secretary of Commerce in accordance with guidelines and procedures established by the Administrator of General Services.

1-402. Executive Order No. 11753 [set out as a note above] is revoked; however, nothing in this Order shall be deemed to require new charters for the Council, including its executive and subordinate committees, which were current immediately prior to the issuance of this Order.

1-403. The Council shall terminate on December 31, 1980, unless sooner extended.

JIMMY CARTER.

§ 2402. Congressional declaration of policy

The Congress makes the following declarations:

(1) It is the policy of the United States to minimize uncertainties in export control policy and to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest.

(2) It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary—

(A) to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country or combination of countries which would prove detrimental to the national security of the United States;

(B) to restrict the export of goods and technology where necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations; and

(C) to restrict the export of goods where necessary to protect the domestic economy from the excessive drain of scarce materials and to reduce the serious inflationary impact of foreign demand.

(3) It is the policy of the United States (A) to apply any necessary controls to the maximum extent possible in cooperation with all nations, and (B) to encourage observance of a uniform export control policy by all nations with which the United States has defense treaty commitments.

(4) It is the policy of the United States to use its economic resources and trade potential to further the sound growth and stability of its economy as well as to further its national security and foreign policy objectives.

(5) It is the policy of the United States—

(A) to oppose restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries friendly to the United States or against any United States person;

(B) to encourage and, in specified cases, require United States persons engaged in the export of goods or technology or other information to refuse to take actions, including furnishing information or entering into or implementing agreements, which have the effect of furthering or supporting the restrictive trade practices or boycotts fostered or imposed by any foreign country against a country friendly to the United States or against any United States person; and

(C) to foster international cooperation and the development of international rules and institutions to assure reasonable access to world supplies.

(6) It is the policy of the United States that the desirability of subjecting, or continuing to subject, particular goods or technology or other information to United States export controls should be subjected to review by and consultation with representatives of appropriate United States Government agencies and private industry.

(7) It is the policy of the United States to use export controls, including license fees, to secure the removal by foreign countries of restrictions on access to supplies where such restrictions have or may have a serious domestic inflationary impact, have caused or may cause a serious domestic shortage, or have been imposed for purposes of influencing the foreign policy of the United States. In effecting this policy, the President shall make every reasonable effort to secure the removal or reduction of such restrictions, policies, or actions through international cooperation and agreement before resorting to the imposition of controls on exports from the United States. No action taken in fulfillment of the policy set forth in this paragraph shall apply to the export of medicine or medical supplies.

(8) It is the policy of the United States to use export controls to encourage other countries to take immediate steps to prevent the use of their territories or resources to aid, encourage, or give sanctuary to those persons involved in directing, supporting, or participating in acts of international terrorism. To achieve this objective, the President shall make every reasonable effort to secure the removal or reduction of such assistance to international terrorists through international cooperation and agreement before resorting to the imposition of export controls.

(9) It is the policy of the United States to cooperate with other countries with which the United States has defense treaty commitments in restricting the export of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the security of the United States and of those countries with which the United States has defense treaty commitments.

(10) It is the policy of the United States that export trade by United States citizens be given a high priority and not be controlled except when such controls (A) are necessary to further fundamental national security, foreign policy, or short supply objectives, (B) will clearly further such objectives, and (C) are administered consistent with basic standards of due process.

(11) It is the policy of the United States to minimize restrictions on the export of agricultural commodities and products.

(Pub. L. 96-72, § 3, Sept. 29, 1979, 93 Stat. 504.)

PRIOR PROVISIONS

A prior section 2402, Pub. L. 91-184, § 3, Dec. 30, 1969, 83 Stat. 841; Pub. L. 92-412, title I, § 103, Aug. 29, 1972, 86 Stat. 644; Pub. L. 93-500, §§ 2, 4(b), (c), 11, Oct. 29, 1974, 88 Stat. 1552, 1553, 1556; Pub. L. 95-52, title I, § 115, title II, § 202, June 22, 1977, 91 Stat. 241, 247, setting forth the declaration of policy of Congress with respect to the Export Administration Act of 1969, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2403, 2404, 2405, 2406, 2407, 2409, 2413 of this Appendix; title 26 section 993; title 42 section 6212.

§ 2403. General provisions

(a) Types of licenses

Under such conditions as may be imposed by the Secretary which are consistent with the provisions of this Act [sections 2401 to 2420 of this Appendix], the Secretary may require any of the following types of export licenses:

(1) A validated license, authorizing a specific export, issued pursuant to an application by the exporter.

(2) A qualified general license, authorizing multiple exports, issued pursuant to an application by the exporter.

(3) A general license, authorizing exports, without application by the exporter.

(4) Such other licenses as may assist in the effective and efficient implementation of this Act [sections 2401 to 2420 of this Appendix].

(b) Commodity control list

The Secretary shall establish and maintain a list (hereinafter in this Act [sections 2401 to 2404 of this Appendix] referred to as the "commodity control list") consisting of any goods or technology subject to export controls under this Act [sections 2401 to 2420 of this Appendix].

(c) Foreign availability

In accordance with the provisions of this Act [sections 2401 to 2404 of this Appendix], the President shall not impose export controls for foreign policy or national security purposes on the export from the United States of goods or technology which he determines are available without restriction from sources outside the United States in significant quantities and comparable in quality to those produced in the United States, unless the President determines that adequate evidence has been presented to him demonstrating that the absence of such controls would prove detrimental to the foreign policy or national security of the United States.

(d) Right of export

No authority or permission to export may be required under this Act [sections 2401 to 2404 of this Appendix], or under regulations issued under this Act [sections 2401 to 2404 of this Appendix], except to carry out the policies set forth in section 3 of this Act [section 2402 of this Appendix].

(e) Delegation of authority

The President may delegate the power, authority, and discretion conferred upon him by this Act [sections 2401 to 2404 of this Appendix] to such departments, agencies, or officials of the Government as he may consider appropriate, except that no authority under this Act [sections 2401 to 2404 of this Appendix] may be delegated to, or exercised by, any official of any department or agency the head of which is not appointed by the President, by and with the advice and consent of the Senate. The President may not delegate or transfer his power, authority, and discretion to overrule or modify any recommendation or decision made by the Secretary, the Secretary of Defense, or the Secretary of State pursuant to the provisions of this Act [sections 2401 to 2404 of this Appendix].

(f) Notification of the public; consultation with business

The Secretary shall keep the public fully apprised of changes in export control policy and procedures instituted in conformity with this Act [sections 2401 to 2420 of this Appendix] with a view to encouraging trade. The Secretary shall meet regularly with representatives of the business sector in order to obtain their views on export control policy and the foreign availability of goods and technology.

(Pub. L. 96-72, § 4, Sept. 29, 1979, 93 Stat. 505.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, known as the "Export Administration Act of 1979", which enacted sections 2401 to 2420 of this Appendix, amended section 1732 of Title 7, Agriculture, sections 2778 and 3108 of Title 22, Foreign Relations and Intercourse, section 993 of Title 26, Internal Revenue Code, and sections 6212 and 6274 of Title 42, The Public Health and Welfare, and enacted provisions set out as notes under sections 2401, 2406, and 2409 of this Appendix and section 3108 of Title 22. For complete classification of this Act to the Code see Short Title note set out under section 2401 of this Appendix and Tables.

PRIOR PROVISIONS

A prior section 2403, Pub. L. 91-184, § 4, Dec. 30, 1969, 83 Stat. 842; Pub. L. 92-412, title I, § 104(a), (b)(1), Aug. 29, 1972, 86 Stat. 644, 645; Pub. L. 93-500, §§ 3(a), 5(a), 7, 9, 10, 12, Oct. 29, 1974, 88 Stat. 1552-1557; Pub. L. 95-52, title I, §§ 103(a), (b)(1)-(3), (c), 104-110, 113(b), title II, § 201(b), June 22, 1977, 91 Stat. 235-239, 241, 246; Pub. L. 95-223, title III, § 301(a), (b)(1), Dec. 28, 1977, 91 Stat. 1629; Pub. L. 95-384, § 6(d)(2), Sept. 26, 1978, 92 Stat. 731; Pub. L. 95-435, § 5(d), Oct. 10, 1978, 92 Stat. 1052; Pub. L. 96-67, § 2, Sept. 21, 1979, 93 Stat. 415, setting forth provisions relating to authorities to effectuate policies and limitations on exercise of authorities, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

EXECUTIVE ORDER NO. 11533

Ex. Ord. No. 11533, June 4, 1970, 35 F.R. 8799, as amended by Ex. Ord. No. 11907, Mar. 1, 1976, 41 F.R. 9085, which provided for the administration of the Export Administration Act, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out as a note below.

EXECUTIVE ORDER NO. 11683

Ex. Ord. No. 11683, Aug. 29, 1972, 37 F.R. 17813, which revoked Ex. Ord. No. 11677, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out as a note below.

EXECUTIVE ORDER NO. 11798

Ex. Ord. No. 11798, Aug. 14, 1974, 39 F.R. 29567, which provided for the continuing regulation of exports, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out as a note below.

EXECUTIVE ORDER NO. 11818

Ex. Ord. No. 11818, Nov. 5, 1974, 39 F.R. 39429, which provided for the continuing regulation of exports, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out as a note below.

EXECUTIVE ORDER NO. 11940

Ex. Ord. No. 11940, Sept. 30, 1976, 41 F.R. 43707, which provided for the continuing regulation of exports, was revoked by Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, set out as a note below.

EX. ORD. NO. 12002. ADMINISTRATION OF EXPORT ADMINISTRATION ACT

Ex. Ord. No. 12002, July 7, 1977, 42 F.R. 35623, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.), and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Except as provided in Section 2, the power, authority, and discretion conferred upon the President by the provisions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401, et seq.), hereinafter referred to as the Act, are delegated to the Secretary of Commerce, with the power of successive redelegation.

SEC. 2. (a) The power, authority and discretion conferred upon the President in Sections 4(h) and 4(l) of the Act are retained by the President.

(b) The power, authority and discretion conferred upon the President in Section 3(8) of the Act [section 2402(8) of this Appendix], which directs that every reasonable effort be made to secure the removal or reduction of assistance by foreign countries to interna-

tional terrorists through cooperation and agreement, are delegated to the Secretary of State, with the power of successive redelegation.

SEC. 3. The Export Administration Review Board, hereinafter referred to as the Board, which was established by Executive Order No. 11533 of June 4, 1970, as amended, is hereby continued. The Board shall continue to have as members the Secretary of Commerce, who shall be Chairman of the Board, the Secretary of State, the Secretary of Defense, and the Chairman of the East-West Foreign Trade Board (Section 7 of Executive Order No. 11846, as amended) [set out as a note under section 2111 of Title 19, Customs Duties]. No alternate Board members shall be designated, but the acting head of any department may serve in lieu of the head of the concerned department. In the case of the East-West Foreign Trade Board, the Deputy Chairman or the Executive Secretary may serve in lieu of the Chairman. The Board may invite the heads of other United States Government departments or agencies, other than the agencies represented by Board members, to participate in the activities of the Board when matters of interest to such departments or agencies are under consideration.

SEC. 4. The Secretary of Commerce may from time to time refer to the Board such particular export license matters, involving questions of national security or other major policy issues, as the Secretary shall select. The Secretary of Commerce shall also refer to the Board any other such export license matter, upon the request of any other member of the Board or of the head of any other United States Government department or agency having any interest in such matter. The Board shall consider the matters so referred to it, giving due consideration to the foreign policy of the United States, the national security, and the domestic economy, and shall make recommendation thereon to the Secretary of Commerce.

SEC. 5. The President may at any time (a) prescribe rules and regulations applicable to the power, authority, and discretion referred to in this Order, and (b) communicate to the Secretary of Commerce such specific directives applicable thereto as the President shall determine. The Secretary of Commerce shall from time to time report to the President upon the administration of the Act and, as the Secretary deems necessary, may refer to the President recommendations made by the Board under Section 4 of this Order. Neither the provisions of this section nor those of Section 4 shall be construed as limiting the provisions of Section 1 of this Order.

SEC. 6. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under, or continued in existence by, the Executive orders revoked in Section 7 of this Order, and not revoked administratively or legislatively, shall remain in full force and effect under this Order until amended, modified, or terminated by proper authority. The revocations in Section 7 of this Order shall not affect any violation of any rules, regulations, orders, licenses or other forms of administrative action under those Orders during the period those Orders were in effect.

SEC. 7. Executive Order No. 11533 of June 4, 1970, Executive Order No. 11683 of August 29, 1972, Executive Order No. 11798 of August 14, 1974, Executive Order No. 11818 of November 5, 1974, Executive Order No. 11907 of March 1, 1976, and Executive Order No. 11940 of September 30, 1976 are hereby revoked.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2404, 2413 of this Appendix.

§ 2403–1. Exports to controlled countries of goods, technology, and industrial techniques developed by funds authorized for Department of Defense

(a) Congressional findings and declaration of purpose; notice to Secretary of Defense of proposed export; review authorization

The Congress finds that the defense posture of the United States may be seriously compromised if goods, technology, and industrial techniques which have been developed in whole or in part as a direct or indirect result of research and development programs or procurement programs financed in whole or in part with funds authorized by this or any other Act authorizing funds for the Department of Defense are exported to a controlled country without an adequate and knowledgeable assessment having been made to determine whether the export of such goods, technology, and techniques will significantly increase the present or potential military capability of any such country. It is the purpose of this section, therefore, to provide for such an assessment, to insure notice of proposed exports to the Secretary of Defense, and to authorize the Secretary of Defense to review the proposed export of goods, technology, or industrial techniques to any such country whenever he has reason to believe that the export of such goods, technology, or techniques will significantly increase the military capability of such country.

(b) Review and assessment of export application

Effective upon enactment of this section [Aug. 5, 1974], any application for the export of any goods, technology, or industrial techniques described in subsection (a) shall, before being eligible for export to a controlled country, be reviewed and assessed by the Secretary of Defense for the purpose of determining whether the export of such goods, technology or techniques will significantly increase the present or potential military capability of such country.

(c) Recommendation to President by Secretary of Defense for disapproval of export application; Presidential statement to Congress disagreeing with Secretary's recommendation for disapproval of export application; approval of export application subsequent to Presidential statement

If the Secretary of Defense determines, after his review and assessment, that the export of such goods, technology or industrial techniques will in his judgment significantly increase the present or potential military capability of any controlled country, he shall recommend to the President that the application for export be disapproved. In any case in which the President disagrees with a recommendation made by the Secretary of Defense to prohibit the export of such goods, technology, or techniques to a controlled country, the President shall submit to the Congress a statement indicating his disagreement with the Secretary of Defense together with the recommendation of the Secretary of Defense. The application for the export of any such goods, technology, or techniques may be approved after submission by the President of his statement and the recommendation of the Secretary of Defense to the Congress and 60 days of continuous session of the Con-

gress has elapsed following such submission unless within such 60 day period Congress has adopted a concurrent resolution disapproving the application for the export of such goods, technology, or techniques.

(d) Definitions

As used in this section (1) the term "controlled country" means the Soviet Union, Poland, Romania, Hungary, Bulgaria, Czechoslovakia, the German Democratic Republic (East Germany), and such other countries as may be designated by the Secretary of Defense, and (2) the term "days of continuous session of the Congress" shall not include days on which either House of Congress is not in session because of an adjournment of more than three days.

(e) Report to Congress by Secretary of Defense; contents

The Secretary of Defense shall submit to the Congress a written report on his implementation of this section not later than 30 days after the close of each quarter of each fiscal year. Each such report shall, among other things, identify each instance in which the Secretary recommended to the President that exports be disapproved and the action finally taken by the executive branch on the matter.

(Pub. L. 93-365, title VII, § 709, Aug. 5, 1974, 88 Stat. 408.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 93-365, Aug. 5, 1974, 88 Stat. 399. Provisions of this Act authorizing funds for the Department of Defense were not classified to the Code.

CODIFICATION

Section was not enacted as part of Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, known as the Export Administration Act of 1979, which comprises sections 2401 to 2420 of this Appendix.

§§ 2403-1a, 2403a. Omitted

CODIFICATION

Section 2403-1a, Pub. L. 91-184, § 4A, as added Pub. L. 95-52, title II, § 201(a), June 22, 1977, 91 Stat. 244, which set forth provisions prohibiting United States persons from participating in foreign boycotts and administrative enforcement of such prohibitions expired on Sept. 30, 1979, and was omitted from the Code as terminated.

Section 2403a, Pub. L. 91-184, § 4B, formerly § 4A, as added Pub. L. 93-500, § 8, Oct. 29, 1974, 88 Stat. 1554, and renumbered Pub. L. 95-52, title II, § 201(a), June 22, 1977, 91 Stat. 244, which set forth procedures applicable for relief from export controls upon showing of hardship, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

PREEMPTION OF LAWS, RULES, OR REGULATIONS OF OTHER GOVERNMENTAL ENTITIES PERTAINING TO RESTRICTIVE TRADE PRACTICES OR BOYCOTTS BY FOREIGN COUNTRIES

Pub. L. 95-52, title II, § 205, June 22, 1977, 91 Stat. 248, which provided for preemption by the amendments made by title II of Pub. L. 95-52 to the Export Administration Act of 1969, was omitted from the Code as obsolete in view of the termination of the Export Administration Act of 1969.

§ 2404. National security controls

(a) Authority

(1) In order to carry out the policy set forth in section 3(2)(A) of this Act [section 2402(2)(A) of this Appendix], the President may, in accordance with the provisions of this section, prohibit or curtail the export of any goods or technology subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. The authority contained in this subsection shall be exercised by the Secretary, in consultation with the Secretary of Defense, and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses described in section 4(a) of this Act [section 2403(a) of this Appendix].

(2)(A) Whenever the Secretary makes any revision with respect to any goods or technology, or with respect to the countries or destinations, affected by export controls imposed under this section, the Secretary shall publish in the Federal Register a notice of such revision and shall specify in such notice that the revision relates to controls imposed under the authority contained in this section.

(B) Whenever the Secretary denies any export license under this section, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls imposed under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restriction, if appropriate.

(3) In issuing regulations to carry out this section, particular attention shall be given to the difficulty of devising effective safeguards to prevent a country that poses a threat to the security of the United States from diverting critical technologies to military use, the difficulty of devising effective safeguards to protect critical goods, and the need to take effective measures to prevent the reexport of critical technologies from other countries to countries that pose a threat to the security of the United States. Such regulations shall not be based upon the assumption that such effective safeguards can be devised.

(b) Policy toward individual countries

In administering export controls for national security purposes under this section, United States policy toward individual countries shall not be determined exclusively on the basis of a country's Communist or non-Communist status but shall take into account such factors as the country's present and potential relationship to the United States, its present and potential relationship to countries friendly or hostile to the United States, its ability and willingness to con-

trol retransfers of United States exports in accordance with United States policy, and such other factors as the President considers appropriate. The President shall review not less frequently than every three years in the case of controls maintained cooperatively with other nations, and annually in the case of all other controls, United States policy toward individual countries to determine whether such policy is appropriate in light of the factors specified in the preceding sentence.

(c) Control list

(1) The Secretary shall establish and maintain, as part of the commodity control list, a list of all goods and technology subject to export controls under this section. Such goods and technology shall be clearly identified as being subject to controls under this section.

(2) The Secretary of Defense and other appropriate departments and agencies shall identify goods and technology for inclusion on the list referred to in paragraph (1). Those items which the Secretary and the Secretary of Defense concur shall be subject to export controls under this section shall comprise such list. If the Secretary and the Secretary of Defense are unable to concur on such items, the matter shall be referred to the President for resolution.

(3) The Secretary shall issue regulations providing for review of the list established pursuant to this subsection not less frequently than every 3 years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, in order to carry out the policy set forth in section 3(2)(A) [section 2402(2)(A) of this Appendix] and the provisions of this section, and for the prompt issuance of such revisions of the list as may be necessary. Such regulations shall provide interested Government agencies and other affected or potentially affected parties with an opportunity, during such review, to submit written data, views, or arguments, with or without oral presentation. Such regulations shall further provide that, as part of such review, an assessment be made of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled under this section. The Secretary and any agency rendering advice with respect to export controls shall keep adequate records of all decisions made with respect to revision of the list of controlled goods and technology, including the factual and analytical basis for the decision, and, in the case of the Secretary, any dissenting recommendations received from any agency.

(d) Militarily critical technologies

(1) The Secretary, in consultation with the Secretary of Defense, shall review and revise the list established pursuant to subsection (c), as prescribed in paragraph (3) of such subsection, for the purpose of insuring that export controls imposed under this section cover and (to the maximum extent consistent with the purposes of this Act [sections 2401 to 2420 of this Appendix]) are limited to militarily critical goods and technologies and the mechanisms through which such goods and technologies may be effectively transferred.

(2) The Secretary of Defense shall bear primary responsibility for developing a list of militarily critical technologies. In developing such list, primary emphasis shall be given to—

(A) arrays of design and manufacturing know-how,

(B) keystone manufacturing, inspection, and test equipment, and

(C) goods accompanied by sophisticated operation, application, or maintenance know-how,

which are not possessed by countries to which exports are controlled under this section and which, if exported, would permit a significant advance in a military system of any such country.

(3) The list referred to in paragraph (2) shall be sufficiently specific to guide the determinations of any official exercising export licensing responsibilities under this Act [sections 2401 to 2420 of this Appendix].

(4) The initial version of the list referred to in paragraph (2) shall be completed and published in an appropriate form in the Federal Register not later than October 1, 1980.

(5) The list of militarily critical technologies developed primarily by the Secretary of Defense pursuant to paragraph (2) shall become a part of the commodity control list, subject to the provisions of subsection (c) of this section.

(6) The Secretary of Defense shall report annually to the Congress on actions taken to carry out this subsection.

(e) Export licenses

(1) The Congress finds that the effectiveness and efficiency of the process of making export licensing determinations under this section is severely hampered by the large volume of validated export license applications required to be submitted under this Act [sections 2401 to 2420 of this Appendix]. Accordingly, it is the intent of Congress in this subsection to encourage the use of a qualified general license in lieu of a validated license.

(2) To the maximum extent practicable, consistent with the national security of the United States, the Secretary shall require a validated license under this section for the export of goods or technology only if—

(A) the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party and, under the terms of such multilateral agreement, such export requires the specific approval of the parties to such multilateral agreement;

(B) with respect to such goods or technology, other nations do not possess capabilities comparable to those possessed by the United States; or

(C) the United States is seeking the agreement of other suppliers to apply comparable controls to such goods or technology and, in the judgment of the Secretary, United States export controls on such goods or technology, by means of such license, are necessary pending the conclusion of such agreement.

(3) To the maximum extent practicable, consistent with the national security of the United

States, the Secretary shall require a qualified general license, in lieu of a validated license, under this section for the export of goods or technology if the export of such goods or technology is restricted pursuant to a multilateral agreement, formal or informal, to which the United States is a party, but such export does not require the specific approval of the parties to such multilateral agreement.

(4) Not later than July 1, 1980, the Secretary shall establish procedures for the approval of goods and technology that may be exported pursuant to a qualified general license.

(f) Foreign availability

(1) The Secretary, in consultation with appropriate Government agencies and with appropriate technical advisory committees established pursuant to subsection (h) of this section, shall review, on a continuing basis, the availability, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, of any goods or technology the export of which requires a validated license under this section. In any case in which the Secretary determines, in accordance with procedures and criteria which the Secretary shall by regulation establish, that any such goods or technology are available in fact to such destinations from such sources in sufficient quantity and of sufficient quality so that the requirement of a validated license for the export of such goods or technology is or would be ineffective in achieving the purpose set forth in subsection (a) of this section, the Secretary may not, after the determination is made, require a validated license for the export of such goods or technology during the period of such foreign availability, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis, and the estimated economic impact of the decision.

(2) The Secretary shall approve any application for a validated license which is required under this section for the export of any goods or technology to a particular country and which meets all other requirements for such an application, if the Secretary determines that such goods or technology will, if the license is denied, be available in fact to such country from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of sufficient quality so that denial of the license would be ineffective in achieving the purpose set forth in subsection (a) of this section, subject to the exception set forth in paragraph (1) of this subsection. In any case in which the Secretary makes a determination of foreign availability under this paragraph with respect to any goods or technology, the Secretary shall determine whether a determination of foreign availability under paragraph (1) with respect to such goods or technology is warranted.

(3) With respect to export controls imposed under this section, any determination of foreign availability which is the basis of a decision to grant a license for, or to remove a control on, the export of a good or technology, shall be made in writing and shall be supported by reliable evidence, including scientific or physical examination, expert opinion based upon adequate factual information, or intelligence information. In assessing foreign availability with respect to license applications, uncorroborated representations by applicants shall not be deemed sufficient evidence of foreign availability.

(4) In any case in which, in accordance with this subsection, export controls are imposed under this section notwithstanding foreign availability, the President shall take steps to initiate negotiations with the governments of the appropriate foreign countries for the purpose of eliminating such availability. Whenever the President has reason to believe goods or technology subject to export control for national security purposes by the United States may become available from other countries to countries to which exports are controlled under this section and that such availability can be prevented or eliminated by means of negotiations with such other countries, the President shall promptly initiate negotiations with the governments of such other countries to prevent such foreign availability.

(5) In order to further carry out the policies set forth in this Act [sections 2401 to 2420 of this Appendix], the Secretary shall establish, within the Office of Export Administration of the Department of Commerce, a capability to monitor and gather information with respect to the foreign availability of any goods or technology subject to export controls under this Act [sections 2401 to 2420 of this Appendix].

(6) Each department or agency of the United States with responsibilities with respect to export controls, including intelligence agencies, shall, consistent with the protection of intelligence sources and methods, furnish information to the Office of Export Administration concerning foreign availability of goods and technology subject to export controls under this Act [sections 2401 to 2420 of this Appendix], and such Office, upon request or where appropriate, shall furnish to such departments and agencies the information it gathers and receives concerning foreign availability.

(g) Indexing

In order to ensure that requirements for validated licenses and qualified general licenses are periodically removed as goods or technology subject to such requirements become obsolete with respect to the national security of the United States, regulations issued by the Secretary may, where appropriate, provide for annual increases in the performance levels of goods or technology subject to any such licensing requirement. Any such goods or technology which no longer meet the performance levels established by the latest such increase shall be removed from the list established pursuant to

subsection (c) of this section unless, under such exceptions and under such procedures as the Secretary shall prescribe, any other department or agency of the United States objects to such removal and the Secretary determines, on the basis of such objection, that the goods or technology shall not be removed from the list. The Secretary shall also consider, where appropriate, removing site visitation requirements for goods and technology which are removed from the list unless objections described in this subsection are raised.

(h) Technical advisory committees

(1) Upon written request by representatives of a substantial segment of any industry which produces any goods or technology subject to export controls under this section or being considered for such controls because of their significance to the national security of the United States, the Secretary shall appoint a technical advisory committee for any such goods or technology which the Secretary determines are difficult to evaluate because of questions concerning technical matters, worldwide availability, and actual utilization of production and technology, or licensing procedures. Each such committee shall consist of representatives of United States industry and Government, including the Departments of Commerce, Defense, and State and, in the discretion of the Secretary, other Government departments and agencies. No person serving on any such committee who is a representative of industry shall serve on such committee for more than four consecutive years.

(2) Technical advisory committees established under paragraph (1) shall advise and assist the Secretary, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under this Act [sections 2401 to 2420 of this Appendix], with respect to actions designed to carry out the policy set forth in section 3(2)(A) of this Act [section 2402(2)(A) of this Appendix]. Such committees, where they have expertise in such matters, shall be consulted with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which affect the level of export controls applicable to any goods or technology, and (D) exports subject to multilateral controls in which the United States participates, including proposed revisions of any such multilateral controls. Nothing in this subsection shall prevent the Secretary or the Secretary of Defense from consulting, at any time, with any person representing industry or the general public, regardless of whether such person is a member of a technical advisory committee. Members of the public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to present evidence to such committees.

(3) Upon request of any member of any such committee, the Secretary may, if the Secretary determines it appropriate, reimburse such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the duties of such member.

(4) Each such committee shall elect a chairman, and shall meet at least every three months at the call of the chairman, unless the chairman determines, in consultation with the other members of the committee, that such a meeting is not necessary to achieve the purposes of this subsection. Each such committee shall be terminated after a period of 2 years, unless extended by the Secretary for additional periods of 2 years. The Secretary shall consult each such committee with respect to such termination or extension of that committee.

(5) To facilitate the work of the technical advisory committees, the Secretary, in conjunction with other departments and agencies participating in the administration of this Act [sections 2401 to 2420 of this Appendix], shall disclose to each such committee adequate information, consistent with national security, pertaining to the reasons for the export controls which are in effect or contemplated for the goods or technology with respect to which that committee furnishes advice.

(6) Whenever a technical advisory committee certifies to the Secretary that goods or technology with respect to which such committee was appointed have become available in fact, to countries to which exports are controlled under this section, from sources outside the United States, including countries which participate with the United States in multilateral export controls, in sufficient quantity and of sufficient quality so that requiring a validated license for the export of such goods or technology would be ineffective in achieving the purpose set forth in subsection (a) of this section, and provides adequate documentation for such certification, in accordance with the procedures established pursuant to subsection (f)(1) of this section, the Secretary shall investigate such availability, and if such availability is verified, the Secretary shall remove the requirement of a validated license for the export of the goods or technology, unless the President determines that the absence of export controls under this section would prove detrimental to the national security of the United States. In any case in which the President determines that export controls under this section must be maintained notwithstanding foreign availability, the Secretary shall publish that determination together with a concise statement of its basis and the estimated economic impact of the decision.

(i) Multilateral export controls

The President shall enter into negotiations with the governments participating in the group known as the Coordinating Committee (hereinafter in this subsection referred to as the "Committee") with a view toward accomplishing the following objectives:

(1) Agreement to publish the list of items controlled for export by agreement of the Committee, together with all notes, understandings, and other aspects of such agreement of the Committee, and all changes thereto.

(2) Agreement to hold periodic meetings with high-level representatives of such governments, for the purpose of discussing export control policy issues and issuing policy guidance to the Committee.

(3) Agreement to reduce the scope of the export controls imposed by agreement of the Committee to a level acceptable to and enforceable by all governments participating in the Committee.

(4) Agreement on more effective procedures for enforcing the export controls agreed to pursuant to paragraph (3).

(j) Commercial agreements with certain countries

(1) Any United States firm, enterprise, or other nongovernmental entity which, for commercial purposes, enters into any agreement with any agency of the government of a country to which exports are restricted for national security purposes, which agreement cites an intergovernmental agreement (to which the United States and such country are parties) calling for the encouragement of technical cooperation and is intended to result in the export from the United States to the other party of unpublished technical data of United States origin, shall report the agreement with such agency to the Secretary.

(2) The provisions of paragraph (1) shall not apply to colleges, universities, or other educational institutions.

(k) Negotiations with other countries

The Secretary of State, in consultation with the Secretary of Defense, the Secretary of Commerce, and the heads of other appropriate departments and agencies, shall be responsible for conducting negotiations with other countries regarding their cooperation in restricting the export of goods and technology in order to carry out the policy set forth in section 3(9) of this Act [section 2402(9) of this Appendix], as authorized by subsection (a) of this section, including negotiations with respect to which goods and technology should be subject to multilaterally agreed export restrictions and what conditions should apply for exceptions from those restrictions.

(l) Diversion to military use of controlled goods or technology

(1) Whenever there is reliable evidence that goods or technology, which were exported subject to national security controls under this section to a country to which exports are controlled for national security purposes, have been diverted to significant military use in violation of the conditions of an export license, the Secretary for as long as that diversion to significant military use continues—

(A) shall deny all further exports to the party responsible for that diversion of any goods or technology subject to national security controls under this section which contribute to that particular military use, regardless of whether such goods or technology are available to that country from sources outside the United States; and

(B) may take such additional steps under this Act [sections 2401 to 2420 of this Appendix] with respect to the party referred to in subparagraph (A) as are feasible to deter the further military use of the previously exported goods or technology.

(2) As used in this subsection, the terms "diversion to significant military use" and "significant military use" means the use of United States goods or technology to design or produce any item on the United States Munitions List.

(Pub. L. 96–72, § 5, Sept. 29, 1979, 93 Stat. 506.)

PRIOR PROVISIONS

A prior section 2404, Pub. L. 91–184, § 5, Dec. 30, 1969, 83 Stat. 843; Pub. L. 92–412, title I, § 105, Aug. 29, 1972, 86 Stat. 645; Pub. L. 93–500, §§ 3(c), (d), 5(b), (c), 6, Oct. 29, 1974, 88 Stat. 1553, 1554; Pub. L. 95–52, title I, § 111, June 22, 1977, 91 Stat. 240, setting forth determinations, limitations, etc., respecting the control and monitoring of exports, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2409, 2411, 2413, 2414, 2416, 2417 of this Appendix.

§ 2405. Foreign policy controls

(a) Authority

(1) In order to carry out the policy set forth in paragraph (2)(B), (7), or (8) of section 3 of this Act [section 2402(2)(B), (7), or (8) of this Appendix], the President may prohibit or curtail the exportation of any goods, technology, or other information subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States, to the extent necessary to further significantly the foreign policy of the United States or to fulfill its declared international obligations. The authority granted by this subsection shall be exercised by the Secretary, in consultation with the Secretary of State and such other departments and agencies as the Secretary considers appropriate, and shall be implemented by means of export licenses issued by the Secretary.

(2) Export controls maintained for foreign policy purposes shall expire on December 31, 1979, or one year after imposition, whichever is later, unless extended by the President in accordance with subsections (b) and (e). Any such extension and any subsequent extension shall not be for a period of more than one year.

(3) Whenever the Secretary denies any export license under this subsection, the Secretary shall specify in the notice to the applicant of the denial of such license that the license was denied under the authority contained in this subsection, and the reasons for such denial, with reference to the criteria set forth in subsection (b) of this section. The Secretary shall also include in such notice what, if any, modifications in or restrictions on the goods or technology for which the license was sought would allow such export to be compatible with controls implemented under this section, or the Secretary shall indicate in such notice which officers and employees of the Department of Commerce who are familiar with the application will be made reasonably available to the applicant for consultation with regard to such modifications or restrictions, if appropriate.

(4) In accordance with the provisions of section 10 of this Act [section 2409 of this Appendix], the Secretary of State shall have the right to review any export license application under this section which the Secretary of State requests to review.

(b) Criteria

When imposing, expanding, or extending export controls under this section, the President shall consider—

(1) the probability that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods or technology proposed for such controls;

(2) the compatibility of the proposed controls with the foreign policy objectives of the United States, including the effort to counter international terrorism, and with overall United States policy toward the country which is the proposed target of the controls;

(3) the reaction of other countries to the imposition or expansion of such export controls by the United States;

(4) the likely effects of the proposed controls on the export performance of the United States, on the competitive position of the United States in the international economy, on the international reputation of the United States as a supplier of goods and technology, and on individual United States companies and their employees and communities, including the effects of the controls on existing contracts;

(5) the ability of the United States to enforce the proposed controls effectively; and

(6) the foreign policy consequences of not imposing controls.

(c) Consultation with industry

The Secretary, before imposing export controls under this section, shall consult with such affected United States industries as the Secretary considers appropriate, with respect to the criteria set forth in paragraphs (1) and (4) of subsection (b) and such other matters as the Secretary considers appropriate.

(d) Alternative means

Before resorting to the imposition of export controls under this section, the President shall determine that reasonable efforts have been made to achieve the purposes of the controls through negotiations or other alternative means.

(e) Notification to Congress

The President in every possible instance shall consult with the Congress before imposing any export control under this section. Except as provided in section 7(g)(3) of this Act [section 2406(g)(3) of this Appendix], whenever the President imposes, expands, or extends export controls under this section, the President shall immediately notify the Congress of such action and shall submit with such notification a report specifying—

(1) the conclusions of the President with respect to each of the criteria set forth in subsection (b); and

(2) the nature and results of any alternative means attempted under subsection (d), or the reasons for imposing, extending, or expanding the control without attempting any such alternative means.

Such report shall also indicate how such controls will further significantly the foreign policy of the United States or will further its declared international obligations. To the extent necessary to further the effectiveness of such export control, portions of such report may be submitted on a classified basis, and shall be subject to the provisions of section 12(c) of this Act [section 2411(c) of this Appendix].

(f) Exclusion for medicine and medical supplies

This section does not authorize export controls on medicine or medical supplies. It is the intent of Congress that the President not impose export controls under this section on any goods or technology if he determines that the principal effect of the export of such goods or technology would be to help meet basic human needs. This subsection shall not be construed to prohibit the President from imposing restrictions on the export of medicine or medical supplies, under the International Emergency Economic Powers Act [50 U.S.C 1701 et seq.]. This subsection shall not apply to any export control on medicine or medical supplies which is in effect on the effective date of this Act [September 30, 1979].

(g) Foreign availability

In applying export controls under this section, the President shall take all feasible steps to initiate and conclude negotiations with appropriate foreign governments for the purpose of securing the cooperation of such foreign governments in controlling the export to countries and consignees to which the United States export controls apply of any goods or technology comparable to goods or technology controlled under this section.

(h) International obligations

The provisions of subsections (b), (c), (d), (f), and (g) shall not apply in any case in which the President exercises the authority contained in this section to impose export controls, or to approve or deny export license applications, in order to fulfill obligations of the United States pursuant to treaties to which the United States is a party or pursuant to other international agreements.

(i) Countries supporting international terrorism

The Secretary and the Secretary of State shall notify the Committee on Foreign Affairs of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate before any license is approved for the export of goods or technology valued at more than $7,000,000 to any country concerning which the Secretary of State has made the following determinations:

(1) Such country has repeatedly provided support for acts of international terrorism.

(2) Such exports would make a significant contribution to the military potential of such country, including its military logistics capability, or would enhance the ability of such country to support acts of international terrorism.

(j) Crime control instruments

(1) Crime control and detection instruments and equipment shall be approved for export by the Secretary only pursuant to a validated export license.

(2) The provisions of this subsection shall not apply with respect to exports to countries which are members of the North Atlantic Treaty Organization or to Japan, Australia, or New Zealand, or to such other countries as the President shall designate consistent with the purposes of this subsection and section 502B of the Foreign Assistance Act of 1961 [22 U.S.C. 2304].

(k) Control list

The Secretary shall establish and maintain, as part of the commodity control list, a list of any goods or technology subject to export controls under this section, and the countries to which such controls apply. Such goods or technology shall be clearly identified as subject to controls under this section. Such list shall consist of goods and technology identified by the Secretary of State, with the concurrence of the Secretary. If the Secretary and the Secretary of State are unable to agree on the list, the matter shall be referred to the President. Such list shall be reviewed not less frequently than every three years in the case of controls maintained cooperatively with other countries, and annually in the case of all other controls, for the purpose of making such revisions as are necessary in order to carry out this section. During the course of such review, an assessment shall be made periodically of the availability from sources outside the United States, or any of its territories or possessions, of goods and technology comparable to those controlled for export from the United States under this section.

(Pub. L. 96-72, § 6, Sept. 29, 1979, 93 Stat. 513.)

REFERENCES IN TEXT

The International Emergency Economic Powers Act, referred to in subsec. (f), is Pub. L. 95-223, title II, Dec. 28, 1977, 91 Stat. 1626, which is classified generally to chapter 35 (§ 1701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1701 of this title and Tables.

PRIOR PROVISIONS

A prior section 2405, Pub. L. 91-184, § 6, Dec. 30, 1969, 83 Stat. 844; Pub. L. 95-52, title I, §§ 103(d), 112, title II, § 203(a), June 22, 1977, 91 Stat. 237, 240, 247; Pub. L. 95-223, title III, § 301(b)(2), Dec. 28, 1977, 91 Stat. 1629, setting forth provisions respecting violations and penalties, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2406, 2407, 2413, 2414, 2416 of this Appendix.

§ 2406. Short supply controls

(a) Authority

(1) In order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], the President may prohibit or curtail the export of any goods subject to the jurisdiction of the United States or exported by any person subject to the jurisdiction of the United States. In curtailing exports to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], the President shall allocate a portion of export licenses on the basis of factors other than a prior history of exportation. Such factors shall include the extent to which a country engages in equitable trade practices with respect to United States goods and treats the United States equitably in times of short supply.

(2) Upon imposing quantitative restrictions on exports of any goods to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], the Secretary shall include in a notice published in the Federal Register with respect to such restrictions an invitation to all interested parties to submit written comments within 15 days from the date of publication on the impact of such restrictions and the method of licensing used to implement them.

(3) In imposing export controls under this section, the President's authority shall include, but not be limited to, the imposition of export license fees.

(b) Monitoring

(1) In order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], the Secretary shall monitor exports, and contracts for exports, of any good (other than a commodity which is subject to the reporting requirements of section 812 of the Agricultural Act of 1970 [7 U.S.C. 612c-3]) when the volume of such exports in relation to domestic supply contributes, or may contribute, to an increase in domestic prices or a domestic shortage, and such price increase or shortage has, or may have, a serious adverse impact on the economy or any sector thereof. Any such monitoring shall commence at a time adequate to assure that the monitoring will result in a data base sufficient to enable policies to be developed, in accordance with section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix], to mitigate a short supply situation or serious inflationary price rise or, if export controls are needed, to permit imposition of such controls in a timely manner. Information which the Secretary requires to be furnished in effecting such monitoring shall be confidential, except as provided in paragraph (2) of this subsection.

(2) The results of such monitoring shall, to the extent practicable, be aggregated and included in weekly reports setting forth, with respect to each item monitored, actual and anticipated exports, the destination by country, and the domestic and worldwide price, supply, and demand. Such reports may be made monthly if the Secretary determines that there is insufficient information to justify weekly reports.

(3) The Secretary shall consult with the Secretary of Energy to determine whether monitoring or export controls under this section are warranted with respect to exports of facilities, machinery, or equipment normally and principally used, or intended to be used, in the production, conversion, or transportation of fuels and energy (except nuclear energy), including, but not limited to, drilling rigs, platforms, and equipment; petroleum refineries, natural gas processing, liquefaction, and gasification plants; facilities for production of synthetic natural gas or synthetic crude oil; oil and gas pipelines,

pumping stations, and associated equipment; and vessels for transporting oil, gas, coal, and other fuels.

(c) Petitions for monitoring or controls

(1)(A) Any entity, including a trade association, firm, or certified or recognized union or group of workers, which is representative of an industry or a substantial segment of an industry which processes metallic materials capable of being recycled with respect to which an increase in domestic prices or a domestic shortage, either of which results from increased exports, has or may have a significant adverse effect on the national economy or any sector thereof, may transmit a written petition to the Secretary requesting the monitoring of exports, or the imposition of export controls, or both, with respect to such material, in order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix].

(B) Each petition shall be in such form as the Secretary shall prescribe and shall contain information in support of the action requested. The petition shall include any information reasonably available to the petitioner indicating (i) that there has been a significant increase, in relation to a specific period of time, in exports of such material in relation to domestic supply, and (ii) that there has been a significant increase in the price of such material or a domestic shortage of such material under circumstances indicating the price increase or domestic shortage may be related to exports.

(2) Within 15 days after receipt of any petition described in paragraph (1), the Secretary shall publish a notice in the Federal Register. The notice shall (A) include the name of the material which is the subject of the petition, (B) include the Schedule B number of the material as set forth in the Statistical Classification of Domestic and Foreign Commodities Exported from the United States, (C) indicate whether the petitioner is requesting that controls or monitoring, or both, be imposed with respect to the exportation of such material, and (D) provide that interested persons shall have a period of 30 days commencing with the date of publication of such notice to submit to the Secretary written data, views, or arguments, with or without opportunity for oral presentation, with respect to the matter involved. At the request of the petitioner or any other entity described in paragraph (1)(A) with respect to the material which is the subject of the petition, or at the request of any entity representative of producers or exporters of such material, the Secretary shall conduct public hearings with respect to the subject of the petition, in which case the 30-day period may be extended to 45 days.

(3) Within 45 days after the end of the 30- or 45-day period described in paragraph (2), as the case may be, the Secretary shall—

(A) determine whether to impose monitoring or controls, or both, on the export of such material, in order to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix]; and

(B) publish in the Federal Register a detailed statement of the reasons for such determination.

(4) Within 15 days after making a determination under paragraph (3) to impose monitoring or controls on the export of a material, the Secretary shall publish in the Federal Register proposed regulations with respect to such monitoring or controls. Within 30 days following the publication of such proposed regulations, and after considering any public comments thereon, the Secretary shall publish and implement final regulations with respect to such monitoring or controls.

(5) For purposes of publishing notices in the Federal Register and scheduling public hearings pursuant to this subsection, the Secretary may consolidate petitions, and responses thereto, which involve the same or related materials.

(6) If a petition with respect to a particular material or group of materials has been considered in accordance with all the procedures prescribed in this subsection, the Secretary may determine, in the absence of significantly changed circumstances, that any other petition with respect to the same material or group of materials which is filed within 6 months after consideration of the prior petition has been completed does not merit complete consideration under this subsection.

(7) The procedures and time limits set forth in this subsection with respect to a petition filed under this subsection shall take precedence over any review undertaken at the initiative of the Secretary with respect to the same subject as that of the petition.

(8) The Secretary may impose monitoring or controls on a temporary basis after a petition is filed under paragraph (1)(A) but before the Secretary makes a determination under paragraph (3) if the Secretary considers such action to be necessary to carry out the policy set forth in section.3(2)(C) of this Act [section 2402(2)(C) of this Appendix].

(9) The authority under this subsection shall not be construed to affect the authority of the Secretary under any other provision of this Act [sections 2401 to 2420 of this Appendix].

(10) Nothing contained in this subsection shall be construed to preclude submission on a confidential basis to the Secretary of information relevant to a decision to impose or remove monitoring or controls under the authority of this Act [sections 2401 to 2420 of this Appendix], or to preclude consideration of such information by the Secretary in reaching decisions required under this subsection. The provisions of this paragraph shall not be construed to affect the applicability of section 552(b) of title 5, United State Code.

(d) Domestically produced crude oil

(1) Notwithstanding any other provision of this Act [sections 2401 to 2420 of this Appendix] and notwithstanding subsection (u) of section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), no domestically produced crude oil transported by pipeline over right-of-way granted pursuant to section 203 of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1652) (except any such crude oil which (A) is exported to an adjacent foreign country to be refined and consumed therein in exchange for the same quantity of crude oil being exported from

that country to the United States; such exchange must result through convenience or increased efficiency of transportation in lower prices for consumers of petroleum products in the United States as described in paragraph (2)(A)(ii) of this subsection, or (B) is temporarily exported for convenience or increased efficiency of transportation across parts of an adjacent foreign country and reenters the United States) may be exported from the United States, or any of its territories and possessions, unless the requirements of paragraph (2) of this subsection are met.

(2) Crude oil subject to the prohibition contained in paragraph (1) may be exported only if—

(A) the President makes and publishes express findings that exports of such crude oil, including exchanges—

(i) will not diminish the total quantity or quality of petroleum refined within, stored within, or legally committed to be transported to and sold within the United States;

(ii) will, within 3 months following the initiation of such exports or exchanges, result in (I) acquisition costs to the refiners which purchase the imported crude oil being lower than the acquisition costs such refiners would have to pay for the domestically produced oil in the absence of such an export or exchange, and (II) not less than 75 percent of such savings in costs being reflected in wholesale and retail prices of products refined from such imported crude oil;

(iii) will be made only pursuant to contracts which may be terminated if the crude oil supplies of the United States are interrupted, threatened, or diminished;

(iv) are clearly necessary to protect the national interest; and

(v) are in accordance with the provisions of this Act [sections 2401 to 2420 of this Appendix]; and

(B) the President reports such findings to the Congress and the Congress, within 60 days thereafter, agrees to a concurrent resolution approving such exports on the basis of the findings.

(3) Notwithstanding any other provision of this section or any other provision of law, including subsection (u) of section 28 of the Mineral Leasing Act of 1920 [30 U.S.C. 185(u)], the President may export oil to any country pursuant to a bilateral international oil supply agreement entered into by the United States with such nation before June 25, 1979, or to any country pursuant to the International Emergency Oil Sharing Plan of the International Energy Agency.

(e) Refined petroleum products

(1) No refined petroleum product may be exported except pursuant to an export license specifically authorizing such export. Not later than 5 days after an application for a license to export any refined petroleum product or residual fuel oil is received, the Secretary shall notify the Congress of such application, together with the name of the exporter, the destination of the proposed export, and the amount and price of the proposed export. Such notification shall be made to the chairman of the Committee on Foreign Affairs of the House of Representatives and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate.

(2) The Secretary may not grant such license during the 30-day period beginning on the date on which notification to the Congress under paragraph (1) is received, unless the President certifies in writing to the Speaker of the House of Representatives and the President pro tempore of the Senate that the proposed export is vital to the national interest and that a delay in issuing the license would adversely affect that interest.

(3) This subsection shall not apply to (A) any export license application for exports to a country with respect to which historical export quotas established by the Secretary on the basis of past trading relationships apply, or (B) any license application for exports to a country if exports under the license would not result in more than 250,000 barrels of refined petroleum products being exported from the United States to such country in any fiscal year.

(4) For purposes of this subsection, "refined petroleum product" means gasoline, kerosene, distillates, propane or butane gas, diesel fuel, and residual fuel oil refined within the United States or entered for consumption within the United States.

(5) The Secretary may extend any time period prescribed in section 10 of this Act [section 2409 of this Appendix] to the extent necessary to take into account delays in action by the Secretary on a license application on account of the provisions of this subsection.

(f) Certain petroleum products

Petroleum products refined in United States Foreign Trade Zones, or in the United States Territory of Guam, from foreign crude oil shall be excluded from any quantitative restrictions imposed under this section except that, if the Secretary finds that a product is in short supply, the Secretary may issue such regulations as may be necessary to limit exports.

(g) Agricultural commodities

(1) The authority conferred by this section shall not be exercised with respect to any agricultural commodity, including fats and oils or animal hides or skins, without the approval of the Secretary of Agriculture. The Secretary of Agriculture shall not approve the exercise of such authority with respect to any such commodity during any period for which the supply of such commodity is determined by the Secretary of Agriculture to be in excess of the requirements of the domestic economy except to the extent the President determines that such exercise of authority is required to carry out the policies set forth in subparagraph (A) or (B) of paragraph (2) of section 3 of this Act [section 2402(2)(A) or (B) of this Appendix]. The Secretary of Agriculture shall, by exercising the authorities which the Secretary of Agriculture has under other applicable provisions of law, collect data with respect to export sales of animal hides and skins.

(2) Upon approval of the Secretary, in consultation with the Secretary of Agriculture, agri-

cultural commodities purchased by or for use in a foreign country may remain in the United States for export at a later date free from any quantitative limitations on export which may be imposed to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix] subsequent to such approval. The Secretary may not grant such approval unless the Secretary receives adequate assurance and, in conjunction with the Secretary of Agriculture, finds (A) that such commodities will eventually be exported, (B) that neither the sale nor export thereof will result in an excessive drain of scarce materials and have a serious domestic inflationary impact, (C) that storage of such commodities in the United States will not unduly limit the space available for storage of domestically owned commodities, and (D) that the purpose of such storage is to establish a reserve of such commodities for later use, not including resale to or use by another country. The Secretary may issue such regulations as may be necessary to implement this paragraph.

(3) If the authority conferred by this section or section 6 [section 2405 of this Appendix] is exercised to prohibit or curtail the export of any agricultural commodity in order to carry out the policies set forth in subparagraph (B) or (C) of paragraph (2) of section 3 of this Act [section 2402(2)(B) or (C) of this Appendix], the President shall immediately report such prohibition or curtailment to the Congress, setting forth the reasons therefor in detail. If the Congress, within 30 days after the date of its receipt of such report, adopts a concurrent resolution disapproving such prohibition or curtailment, then such prohibition or curtailment shall cease to be effective with the adoption of such resolution. In the computation of such 30-day period, there shall be excluded the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or because of an adjournment of the Congress sine die.

(h) Barter agreements

(1) The exportation pursuant to a barter agreement of any goods which may lawfully be exported from the United States, for any goods which may lawfully be imported into the United States, may be exempted, in accordance with paragraph (2) of this subsection, from any quantitative limitation on exports (other than any reporting requirement) imposed to carry out the policy set forth in section 3(2)(C) of this Act [section 2402(2)(C) of this Appendix].

(2) The Secretary shall grant an exemption under paragraph (1) if the Secretary finds, after consultation with the appropriate department or agency of the United States, that—

(A) for the period during which the barter agreement is to be performed—

(i) the average annual quantity of the goods to be exported pursuant to the barter agreement will not be required to satisfy the average amount of such goods estimated to be required annually by the domestic economy and will be surplus thereto; and

(ii) the average annual quantity of the goods to be imported will be less than the average amount of such goods estimated to be required annually to supplement domestic production; and

(B) the parties to such barter agreement have demonstrated adequately that they intend, and have the capacity, to perform such barter agreement.

(3) For purposes of this subsection, the term "barter agreement" means any agreement which is made for the exchange, without monetary consideration, of any goods produced in the United States for any goods produced outside of the United States.

(4) This subsection shall apply only with respect to barter agreements entered into after the effective date of this Act [September 30, 1979].

(i) Unprocessed red cedar

(1) The Secretary shall require a validated license, under the authority contained in subsection (a) of this section, for the export of unprocessed western red cedar (Thuja plicata) logs, harvested from State or Federal lands. The Secretary shall impose quantitative restrictions upon the export of unprocessed western red cedar logs during the 3-year period beginning on the effective date of this Act [September 30, 1979] as follows:

(A) Not more than thirty million board feet scribner of such logs may be exported during the first year of such 3-year period.

(B) Not more than fifteen million board feet scribner of such logs may be exported during the second year of such period.

(C) Not more than five million board feet scribner of such logs may be exported during the third year of such period.

After the end of such 3-year period, no unprocessed western red cedar logs may be exported from the United States.

(2) The Secretary shall allocate export licenses to exporters pursuant to this subsection on the basis of a prior history of exportation by such exporters and such other factors as the Secretary considers necessary and appropriate to minimize any hardship to the producers of western red cedar and to further the foreign policy of the United States.

(3) Unprocessed western red cedar logs shall not be considered to be an agricultural commodity for purposes of subsection (g) of this section.

(4) As used in this subsection, the term "unprocessed western red cedar" means red cedar timber which has not been processed into—

(A) lumber without wane;

(B) chips, pulp, and pulp products;

(C) veneer and plywood;

(D) poles, posts, or pilings cut or treated with preservative for use as such and not intended to be further processed; or

(E) shakes and shingles.

(j) Export of horses

(1) Notwithstanding any other provision of this Act [sections 2401 to 2420 of this Appendix], no horse may be exported by sea from the United States, or any of its territories and possessions, unless such horse is part of a consign-

ment of horses with respect to which a waiver has been granted under paragraph (2) of this subsection.

(2) The Secretary, in consultation with the Secretary of Agriculture, may issue regulations providing for the granting of waivers permitting the export by sea of a specified consignment of horses, if the Secretary, in consultation with the Secretary of Agriculture, determines that no horse in that consignment is being exported for purposes of slaughter.

(Pub. L. 96–72, § 7, Sept. 29, 1979, 93 Stat. 515.)

PRIOR PROVISIONS

A prior section 2406, Pub. L. 91–184, § 7, Dec. 30, 1969, 83 Stat. 845; Pub. L. 95–52, title I, §§ 113(a), 114, title II, § 201(c), June 22, 1977, 91 Stat. 241, 246, setting forth enforcement procedures applicable to the Export Administration Act of 1969, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

ISSUANCE OF REGULATIONS

Section 19(b)(2) of Pub. L. 96–72 provided that: "Regulations implementing the provisions of section 7(c) of this Act [subsec. (c) of this section] shall be issued and take effect not later than January 1, 1980."

ALASKAN UNPROCESSED RED CEDAR EXEMPT FROM EXPORT REGULATIONS

Pub. L. 96–126, title III, § 308, Nov. 27, 1979, 93 Stat. 980, provided that: "Notwithstanding the provisions of any other law, the State of Alaska is exempted from application of the provisions of section 7(i) of the Export Administration Act of 1979 (Public Law 96–72) [subsec. (i) of this section]."

CONFIDENTIAL INFORMATION

Pub. L. 92–412, title I, § 107, Aug. 29, 1972, 86 Stat. 646, which related to the release or publication of classified information under the provisions of former section 2406(c) of this Appendix, was omitted from the Code as obsolete in view of the termination of the Export Administration Act of 1969.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2405, 2413, 2414 of this Appendix; title 26 section 993.

§ 2407. Foreign boycotts

(a) Prohibitions and exceptions

(1) For the purpose of implementing the policies set forth in subparagraph (A) or (B) of paragraph (5) of section 3 of this Act [section 2402(5)(A) or (B) of this Appendix], the President shall issue regulations prohibiting any United States person, with respect to his activities in the interstate or foreign commerce of the United States, from taking or knowingly agreeing to take any of the following actions with intent to comply with, further, or support any boycott fostered or imposed by a foreign country against a country which is friendly to the United States and which is not itself the object of any form of boycott pursuant to United States law or regulation:

(A) Refusing, or requiring any other person to refuse, to do business with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, pursuant to an agreement with, a requirement of, or a request from or on behalf of the boycotting country. The mere absence of a business relationship with or in the boycotted country with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person, does not indicate the existence of the intent required to establish a violation of regulations issued to carry out this subparagraph.

(B) Refusing, or requiring any other person to refuse, to employ or otherwise discriminating against any United States person on the basis of race, religion, sex, or national origin of that person or of any owner, officer, director, or employee of such person.

(C) Furnishing information with respect to the race, religion, sex, or national origin of any United States person or of any owner, officer, director, or employee of such person.

(D) Furnishing information about whether any person has, has had, or proposes to have any business relationship (including a relationship by way of sale, purchase, legal or commercial representation, shipping or other transport, insurance, investment, or supply) with or in the boycotted country, with any business concern organized under the laws of the boycotted country, with any national or resident of the boycotted country, or with any other person which is known or believed to be restricted from having any business relationship with or in the boycotting country. Nothing in this paragraph shall prohibit the furnishing of normal business information in a commercial context as defined by the Secretary.

(E) Furnishing information about whether any person is a member of, has made contributions to, or is otherwise associated with or involved in the activities of any charitable or fraternal organization which supports the boycotted country.

(F) Paying, honoring, confirming, or otherwise implementing a letter of credit which contains any condition or requirement compliance with which is prohibited by regulations issued pursuant to this paragraph, and no United States person shall, as a result of the application of this paragraph, be obligated to pay or otherwise honor or implement such letter of credit.

(2) Regulations issued pursuant to paragraph (1) shall provide exceptions for—

(A) complying or agreeing to comply with requirements (i) prohibiting the import of goods or services from the boycotted country or goods produced or services provided by any business concern organized under the laws of the boycotted country or by nationals or residents of the boycotted country, or (ii) prohibiting the shipment of goods to the boycotting country on a carrier of the boycotted country, or by a route other than that prescribed by the boycotting country or the recipient of the shipment;

(B) complying or agreeing to comply with import and shipping document requirements with respect to the country of origin, the name of the carrier and route of shipment, the name of the supplier of the shipment or

the name of the provider of other services, except that no information knowingly furnished or conveyed in response to such requirements may be stated in negative, blacklisting, or similar exclusionary terms, other than with respect to carriers or route of shipment as may be permitted by such regulations in order to comply with precautionary requirements protecting against war risks and confiscation;

(C) complying or agreeing to comply in the normal course of business with the unilateral and specific selection by a boycotting country, or national or resident thereof, of carriers, insurers, suppliers of services to be performed within the boycotting country or specific goods which, in the normal course of business, are identifiable by source when imported into the boycotting country;

(D) complying or agreeing to comply with export requirements of the boycotting country relating to shipments or transshipments of exports to the boycotted country, to any business concern of or organized under the laws of the boycotted country, or to any national or resident of the boycotted country;

(E) compliance by an individual or agreement by an individual to comply with the immigration or passport requirements of any country with respect to such individual or any member of such individual's family or with requests for information regarding requirements of employment of such individual within the boycotting country; and

(F) compliance by a United States person resident in a foreign country or agreement by such person to comply with the laws of that country with respect to his activities exclusively therein, and such regulations may contain exceptions for such resident complying with the laws or regulations of that foreign country governing imports into such country of trademarked, trade named, or similarly specifically identifiable products, or components of products for his own use, including the performance of contractual services within that country, as may be defined by such regulations.

(3) Regulations issued pursuant to paragraphs (2)(C) and (2)(F) shall not provide exceptions from paragraphs (1)(B) and (1)(C).

(4) Nothing in this subsection may be construed to supersede or limit the operation of the antitrust or civil rights laws of the United States.

(5) This section shall apply to any transaction or activity undertaken, by or through a United States person or any other person, with intent to evade the provisions of this section as implemented by the regulations issued pursuant to this subsection, and such regulations shall expressly provide that the exceptions set forth in paragraph (2) shall not permit activities or agreements (expressed or implied by a course of conduct, including a pattern of responses) otherwise prohibited, which are not within the intent of such exceptions.

(b) Foreign policy controls

(1) In addition to the regulations issued pursuant to subsection (a) of this section, regulations issued under section 6 of this Act [section 2405 of this Appendix] shall implement the policies set forth in section 3(5) [section 2402(5) of this Appendix].

(2) Such regulations shall require that any United States person receiving a request for the furnishing of information, the entering into or implementing of agreements, or the taking of any other action referred to in section 3(5) [section 2402(5) of this Appendix] shall report that fact to the Secretary, together with such other information concerning such request as the Secretary may require for such action as the Secretary considers appropriate for carrying out the policies of that section. Such person shall also report to the Secretary whether such person intends to comply and whether such person has complied with such request. Any report filed pursuant to this paragraph shall be made available promptly for public inspection and copying, except that information regarding the quantity, description, and value of any goods or technology to which such report relates may be kept confidential if the Secretary determines that disclosure thereof would place the United States person involved at a competitive disadvantage. The Secretary shall periodically transmit summaries of the information contained in such reports to the Secretary of State for such action as the Secretary of State, in consultation with the Secretary, considers appropriate for carrying out the policies set forth in section 3(5) of this Act [section 2402(5) of this Appendix].

(c) Preemption

The provisions of this section and the regulations issued pursuant thereto shall preempt any law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof, which law, rule, or regulation pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

(Pub. L. 96-72, § 8, Sept. 29, 1979, 93 Stat. 521.)

REFERENCES IN TEXT

The antitrust laws of the United States, referred to in subsec. (a)(4), are classified generally to chapter 1 (§ 1 et seq.) of Title 15, Commerce and Trade.

The civil rights laws of the United States, referred to in subsec. (a)(4), are classified generally to chapter 21 (§ 1981 et seq.) of Title 42, The Public Health and Welfare.

PRIOR PROVISIONS

A prior section 2407, Pub. L. 91-184, § 8, Dec. 30, 1969, 83 Stat. 846; Pub. L. 95-52, title II, § 203(b), June 22, 1977, 91 Stat. 247, relating to exemption from administrative procedure and judicial review provisions, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2410, 2411, 2414 of this Appendix.

§ 2408. Procedures for hardship relief from export controls

(a) Filing of petitions

Any person who, in such person's domestic manufacturing process or other domestic business operation, utilizes a product produced abroad in whole or in part from a good historically obtained from the United States but which has been made subject to export controls, or any person who historically has exported such a good, may transmit a petition of hardship to the Secretary requesting an exemption from such controls in order to alleviate any unique hardship resulting from the imposition of such controls. A petition under this section shall be in such form as the Secretary shall prescribe and shall contain information demonstrating the need for the relief requested.

(b) Decision of the Secretary

Not later than 30 days after receipt of any petition under subsection (a), the Secretary shall transmit a written decision to the petitioner granting or denying the requested relief. Such decision shall contain a statement setting forth the Secretary's basis for the grant or denial. Any exemption granted may be subject to such conditions as the Secretary considers appropriate.

(c) Factors to be considered

For purposes of this section, the Secretary's decision with respect to the grant or denial of relief from unique hardship resulting directly or indirectly from the imposition of export controls shall reflect the Secretary's consideration of factors such as the following:

(1) Whether denial would cause a unique hardship to the petitioner which can be alleviated only by granting an exception to the applicable regulations. In determining whether relief shall be granted, the Secretary shall take into account—

(A) ownership of material for which there is no practicable domestic market by virtue of the location or nature of the material;

(B) potential serious financial loss to the applicant if not granted an exception;

(C) inability to obtain, except through import, an item essential for domestic use which is produced abroad from the good under control;

(D) the extent to which denial would conflict, to the particular detriment of the applicant, with other national policies including those reflected in any international agreement to which the United States is a party;

(E) possible adverse effects on the economy (including unemployment) in any locality or region of the United States; and

(F) other relevant factors, including the applicant's lack of an exporting history during any base period that may be established with respect to export quotas for the particular good.

(2) The effect a finding in favor of the applicant would have on attainment of the basic objectives of the short supply control program.

In all cases, the desire to sell at higher prices and thereby obtain greater profits shall not be considered as evidence of a unique hardship, nor will circumstances where the hardship is due to imprudent acts or failure to act on the part of the petitioner.

(Pub. L. 96-72, § 9, Sept. 29, 1979, 93 Stat. 524.)

PRIOR PROVISIONS

A prior section 2408, Pub. L. 91-184, § 9, Dec. 30, 1969, 83 Stat. 846, relating to providing information to exporters, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

§ 2409. Procedures for processing export license applications

(a) Primary responsibility of the Secretary

(1) All export license applications required under this Act [sections 2401 to 2420 of this Appendix] shall be submitted by the applicant to the Secretary. All determinations with respect to any such application shall be made by the Secretary, subject to the procedures provided in this section.

(2) It is the intent of the Congress that a determination with respect to any export license application be made to the maximum extent possible by the Secretary without referral of such application to any other department or agency of the Government.

(3) To the extent necessary, the Secretary shall seek information and recommendations from the Government departments and agencies concerned with aspects of United States domestic and foreign policies and operations having an important bearing on exports. Such departments and agencies shall cooperate fully in rendering such information and recommendations.

(b) Initial screening

Within 10 days after the date on which any export license application is submitted pursuant to subsection (a)(1), the Secretary shall—

(1) send the applicant an acknowledgment of the receipt of the application and the date of the receipt;

(2) submit to the applicant a written description of the procedures required by this section, the responsibilities of the Secretary and of other departments and agencies with respect to the application, and the rights of the applicant;

(3) return the application without action if the application is improperly completed or if additional information is required, with sufficient information to permit the application to be properly resubmitted, in which case if such application is resubmitted, it shall be treated as a new application for the purpose of calculating the time periods prescribed in this section;

(4) determine whether it is necessary to refer the application to any other department or agency and, if such referral is determined to be necessary, inform the applicant of any such department or agency to which the application will be referred; and

(5) determine whether it is necessary to submit the application to a multilateral review process, pursuant to a multilateral

agreement, formal or informal, to which the United States is a party and, if so, inform the applicant of this requirement.

(c) Action on certain applications

In each case in which the Secretary determines that it is not necessary to refer an application to any other department or agency for its information and recommendations, a license shall be formally issued or denied within 90 days after a properly completed application has been submitted pursuant to this section.

(d) Referral to other departments and agencies

In each case in which the Secretary determines that it is necessary to refer an application to any other department or agency for its information and recommendations, the Secretary shall, within 30 days after the submission of a properly completed application—

(1) refer the application, together with all necessary analysis and recommendations of the Department of Commerce, concurrently to all such departments or agencies; and

(2) if the applicant so requests, provide the applicant with an opportunity to review for accuracy any documentation to be referred to any such department or agency with respect to such application for the purpose of describing the export in question in order to determine whether such documentation accurately describes the proposed export.

(e) Action by other departments and agencies

(1) Any department or agency to which an application is referred pursuant to subsection (d) shall submit to the Secretary, within 30 days after its receipt of the application, the information or recommendations requested with respect to such application. Except as provided in paragraph (2), any such department or agency which does not submit its recommendations within the time period prescribed in the preceding sentence shall be deemed by the Secretary to have no objection to the approval of such application.

(2) If the head of any such department or agency notifies the Secretary before the expiration of the time period provided in paragraph (1) for submission of its recommendations that more time is required for review by such department or agency, such department or agency shall have an additional 30-day period to submit its recommendations to the Secretary. If such department or agency does not submit its recommendations within the time period prescribed by the preceding sentence, it shall be deemed by the Secretary to have no objection to the approval of such application.

(f) Action by the Secretary

(1) Within 90 days after receipt of the recommendations of other departments and agencies with respect to a license application, as provided in subsection (e), the Secretary shall formally issue or deny the license. In deciding whether to issue or deny a license, the Secretary shall take into account any recommendation of a department or agency with respect to the application in question. In cases where the Secretary receives conflicting recommendations, the Secretary shall, within the 90-day period provided for in this subsection, take such action as may be necessary to resolve such conflicting recommendations.

(2) In cases where the Secretary receives questions or negative considerations or recommendations from any other department or agency with respect to an application, the Secretary shall, to the maximum extent consistent with the national security and foreign policy of the United States, inform the applicant of the specific questions raised and any such negative considerations or recommendations, and shall accord the applicant an opportunity, before the final determination with respect to the application is made, to respond in writing to such questions, considerations, or recommendations.

(3) In cases where the Secretary has determined that an application should be denied, the applicant shall be informed in writing, within 5 days after such determination is made, of the determination, of the statutory basis for denial, the policies set forth in section 3 of the Act [section 2402 of this Appendix] which would be furthered by denial, and, to the extent consistent with the national security and foreign policy of the United States, the specific considerations which led to the denial, and of the availability of appeal procedures. In the event decisions on license applications are deferred inconsistent with the provisions of this section, the applicant shall be so informed in writing within 5 days after such deferral.

(4) If the Secretary determines that a particular application or set of applications is of exceptional importance and complexity, and that additional time is required for negotiations to modify the application or applications, the Secretary may extend any time period prescribed in this section. The Secretary shall notify the Congress and the applicant of such extension and the reasons therefor.

(g) Special procedures for Secretary of Defense

(1) Notwithstanding any other provision of this section, the Secretary of Defense is authorized to review any proposed export of any goods or technology to any country to which exports are controlled for national security purposes and, whenever the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of any such country, to recommend to the President that such export be disapproved.

(2) Notwithstanding any other provision of law, the Secretary of Defense shall determine, in consultation with the Secretary, and confirm in writing the types and categories of transactions which should be reviewed by the Secretary of Defense in order to make a determination referred to in paragraph (1). Whenever a license or other authority is requested for the export to any country to which exports are controlled for national security purposes of goods or technology within any such type or category, the Secretary shall notify the Secretary of Defense of such request, and the Secretary may not issue any license or other authority pursuant to such request before the expiration of the period within which the President may disap-

prove such export. The Secretary of Defense shall carefully consider any notification submitted by the Secretary pursuant to this paragraph and, not later than 30 days after notification of the request, shall—

(A) recommend to the President that he disapprove any request for the export of the goods or technology involved to the particular country if the Secretary of Defense determines that the export of such goods or technology will make a significant contribution, which would prove detrimental to the national security of the United States, to the military potential of such country or any other country;

(B) notify the Secretary that he would recommend approval subject to specified conditions; or

(C) recommend to the Secretary that the export of goods or technology be approved.

If the President notifies the Secretary, within 30 days after receiving a recommendation from the Secretary of Defense, that he disapproves such export, no license or other authority may be issued for the export of such goods or technology to such country.

(3) The Secretary shall approve or disapprove a license application, and issue or deny a license, in accordance with the provisions of this subsection, and, to the extent applicable, in accordance with the time periods and procedures otherwise set forth in this section.

(4) Whenever the President exercises his authority under this subsection to modify or overrule a recommendation made by the Secretary of Defense or exercises his authority to modify or overrule any recommendation made by the Secretary of Defense under subsection (c) or (d) of section 5 of this Act [section 2404(c) or (d) of this Appendix] with respect to the list of goods and technologies controlled for national security purposes, the President shall promptly transmit to the Congress a statement indicating his decision, together with the recommendation of the Secretary of Defense.

(h) Multilateral controls

In any case in which an application, which has been finally approved under subsection (c), (f), or (g) of this section, is required to be submitted to a multilateral review process, pursuant to a multilateral agreement, formal or informal, to which the United States is a party, the license shall not be issued as prescribed in such subsections, but the Secretary shall notify the applicant of the approval of the application (and the date of such approval) by the Secretary subject to such multilateral review. The license shall be issued upon approval of the application under such multilateral review. If such multilateral review has not resulted in a determination with respect to the application within 60 days after such date, the Secretary's approval of the license shall be final and the license shall be issued, unless the Secretary determines that issuance of the license would prove detrimental to the national security of the United States. At the time at which the Secretary makes such a determination, the Secretary shall notify the applicant of the determination and shall notify the Congress of the determination, the reasons for the determination, the reasons for which the multilateral review could not be concluded within such 60-day period, and the actions planned or being taken by the United States Government to secure conclusion of the multilateral review. At the end of every 60-day period after such notification to Congress, the Secretary shall advise the applicant and the Congress of the status of the application, and shall report to the Congress in detail on the reasons for the further delay and any further actions being taken by the United States Government to secure conclusion of the multilateral review. In addition, at the time at which the Secretary issues or denies the license upon conclusion of the multilateral review, the Secretary shall notify the Congress of such issuance or denial and of the total time required for the multilateral review.

(i) Records

The Secretary and any department or agency to which any application is referred under this section shall keep accurate records with respect to all applications considered by the Secretary or by any such department or agency, including, in the case of the Secretary, any dissenting recommendations received from any such department or agency.

(j) Appeal and court action

(1) The Secretary shall establish appropriate procedures for any applicant to appeal to the Secretary the denial of an export license application of the applicant.

(2) In any case in which any action prescribed in this section is not taken on a license application within the time periods established by this section (except in the case of a time period extended under subsection (f)(4) of which the applicant is notified), the applicant may file a petition with the Secretary requesting compliance with the requirements of this section. When such petition is filed, the Secretary shall take immediate steps to correct the situation giving rise to the petition and shall immediately notify the applicant of such steps.

(3) If, within 30 days after a petition is filed under paragraph (2), the processing of the application has not been brought into conformity with the requirements of this section, or the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for a restraining order, a temporary or permanent injunction, or other appropriate relief, to require compliance with the requirements of this section. The United States district courts shall have jurisdiction to provide such relief, as appropriate.

(Pub. L. 96–72, § 10, Sept. 29, 1979, 93 Stat. 525.)

PRIOR PROVISIONS

A prior section 2409, Pub. L. 91–184, § 10, Dec. 30, 1969, 83 Stat. 846; Pub. L. 93–500, § 3(b), Oct. 29, 1974, 88 Stat. 1552; Pub. L. 93–608, § 2(1), Jan. 2, 1975, 88 Stat. 1971; Pub. L. 95–52, title I, § 116 (a), (b)(2), June 22, 1977, 91 Stat. 241, 242, setting forth requirements respecting semiannual reports to the President and Congress, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

ISSUANCE OF REGULATIONS

Section 19(b)(1) of Pub. L. 96-72 provided that: "Regulations implementing the provisions of section 10 of this Act [this section] shall be issued and take effect not later than July 1, 1980."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2405, 2406, 2413, 2416 of this Appendix.

§ 2410. Violations

(a) In general

Except as provided in subsection (b) of this section, whoever knowingly violates any provision of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder shall be fined not more than five times the value of the exports involved or $50,000, whichever is greater, or imprisoned not more than 5 years, or both.

(b) Willful violations

(1) Whoever willfully exports anything contrary to any provision of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued thereunder, with knowledge that such exports will be used for the benefit of any country to which exports are restricted for national security or foreign policy purposes, shall be fined not more than five times the value of the exports involved or $100,000, whichever is greater, or imprisoned not more than 10 years, or both.

(2) Any person who is issued a validated license under this Act [sections 2401 to 2420 of this Appendix] for the export of any good or technology to a controlled country and who, with knowledge that such a good or technology is being used by such controlled country for military or intelligence gathering purposes contrary to the conditions under which the license was issued, willfully fails to report such use to the Secretary of Defense, shall be fined not more than five times the value of the exports involved or $100,000, whichever is greater, or imprisoned for not more than 5 years, or both. For purposes of this paragraph, "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961 [22 U.S.C. 2370(f)].

(c) Civil penalties; administrative sanctions

(1) The head of any department or agency exercising any functions under this Act [sections 2401 to 2420 of this Appendix], or any officer or employee of such department or agency specifically designated by the head thereof, may impose a civil penalty not to exceed $10,000 for each violation of this Act [sections 2401 to 2420 of this Appendix] or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix], either in addition to or in lieu of any other liability or penalty which may be imposed.

(2)(A) The authority under this Act [sections 2401 to 2420 of this Appendix] to suspend or revoke the authority of any United States person to export goods or technology may be used with respect to any violation of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix].

(B) Any administrative sanction (including any civil penalty or any suspension or revocation of authority to export) imposed under this Act [sections 2401 to 2420 of this Appendix] for a violation of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix] may be imposed only after notice and opportunity for an agency hearing on the record in accordance with sections 554 through 557 of title 5, United States Code.

(C) Any charging letter or other document initiating administrative proceedings for the imposition of sanctions for violations of the regulations issued pursuant to section 8(a) of this Act [section 2407(a) of this Appendix] shall be made available for public inspection and copying.

(d) Payment of penalties

The payment of any penalty imposed pursuant to subsection (c) may be made a condition, for a period not exceeding one year after the imposition of such penalty, to the granting, restoration, or continuing validity of any export license, permission, or privilege granted or to be granted to the person upon whom such penalty is imposed. In addition, the payment of any penalty imposed under subsection (c) may be deferred or suspended in whole or in part for a period of time no longer than any probation period (which may exceed one year) that may be imposed upon such person. Such a deferral or suspension shall not operate as a bar to the collection of the penalty in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(e) Refunds

Any amount paid in satisfaction of any penalty imposed pursuant to subsection (c) shall be covered into the Treasury as a miscellaneous receipt. The head of the department or agency concerned may, in his discretion, refund any such penalty, within 2 years after payment, on the ground of a material error of fact or law in the imposition of the penalty. Notwithstanding section 1346(a) of title 28, United States Code, no action for the refund of any such penalty may be maintained in any court.

(f) Actions for recovery of penalties

In the event of the failure of any person to pay a penalty imposed pursuant to subsection (c), a civil action for the recovery thereof may, in the discretion of the head of the department or agency concerned, be brought in the name of the United States. In any such action, the court shall determine de novo all issues necessary to the establishment of liability. Except as provided in this subsection and in subsection (d), no such liability shall be asserted, claimed, or recovered upon by the United States in any way unless it has previously been reduced to judgment.

(g) Other authorities

Nothing in subsection (c), (d), or (f) limits—

(1) the availability of other administrative or judicial remedies with respect to violations of this Act [sections 2401 to 2420 of this Appendix], or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix];

(2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act [sections 2401 to 2420 of this Appendix], or any regulation, order, or license issued under this Act [sections 2401 to 2420 of this Appendix]; or

(3) the authority to compromise, remit or mitigate seizures and forfeitures pursuant to section 1(b) of title VI of the Act of June 15, 1917 (22 U.S.C. 401(b)).

(Pub. L. 96-72, § 11, Sept. 29, 1979, 93 Stat. 529.)

PRIOR PROVISIONS

A prior section 2410, Pub. L. 91-184, § 11, Dec. 30, 1969, 83 Stat. 846; Pub. L. 95-52, title II, § 204, June 22, 1977, 91 Stat. 247, defining the terms "person" and "United States person" for purposes of the Export Administration Act of 1969, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2411, 2412, 2413 of this Appendix; title 22 section 2778.

§ 2411. Enforcement

(a) General authority

To the extent necessary or appropriate to the enforcement of this Act [sections 2401 to 2420 of this Appendix] or to the imposition of any penalty, forfeiture, or liability arising under the Export Control Act of 1949 [former sections 2021 to 2032 of this Appendix] or the Export Administration Act of 1969 [former sections 2401 to 2413 of this Appendix], the head of any department or agency exercising any function thereunder (and officers or employees of such department or agency specifically designated by the head thereof) may make such investigations and obtain such information from, require such reports or the keeping of such records by, make such inspection of the books, records, and other writings, premises, or property of, and take the sworn testimony of, any person. In addition, such officers or employees may administer oaths or affirmations, and may by subpena require any person to appear and testify or to appear and produce books, records, and other writings, or both, and in the case of contumacy by, or refusal to obey a subpena issued to, any such person, the district court of the United States for any district in which such person is found or resides or transacts business, upon application, and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to appear and give testimony or to appear and produce books, records, and other writings, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Immunity

No person shall be excused from complying with any requirements under this section because of his privilege against self-incrimination, but the immunity provisions of section 6002 of title 18, United States Code, shall apply with respect to any individual who specifically claims such privilege.

(c) Confidentiality

(1) Except as otherwise provided by the third sentence of section 8(b)(2) [section 2407(b)(2) of this Appendix] and by section 11(c)(2)(C) of this Act [section 2410(c)(2)(C) of this Appendix], information obtained under this Act [sections 2401 to 2420 of this Appendix] on or before June 30, 1980, which is deemed confidential, including Shippers' Export Declarations, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall be exempt from disclosure under section 552 of title 5, United States Code, and such information shall not be published or disclosed unless the Secretary determines that the withholding thereof is contrary to the national interest. Information obtained under this Act [sections 2401 to 2420 of this Appendix] after June 30, 1980, may be withheld only to the extent permitted by statute, except that information obtained for the purpose of consideration of, or concerning, license applications under this Act [sections 2401 to 2420 of this Appendix] shall be withheld from public disclosure unless the release of such information is determined by the Secretary to be in the national interest. Enactment of this subsection shall not affect any judicial proceeding commenced under section 552 of title 5, United States Code, to obtain access to boycott reports submitted prior to October 31, 1976, which was pending on May 15, 1979; but such proceeding shall be continued as if this Act [sections 2401 to 2420 of this Appendix] had not been enacted.

(2) Nothing in this Act [sections 2401 to 2420 of this Appendix] shall be construed as authorizing the withholding of information from the Congress, and all information obtained at any time under this Act [sections 2401 to 2420 of this Appendix] or previous Acts regarding the control of exports, including any report or license application required under this Act [sections 2401 to 2420 of this Appendix], shall be made available upon request to any committee or subcommittee of Congress of appropriate jurisdiction. No such committee or subcommittee shall disclose any information obtained under this Act [sections 2401 to 2420 of this Appendix] or previous Acts regarding the control of exports which is submitted on a confidential basis unless the full committee determines that the withholding thereof is contrary to the national interest.

(d) Reporting requirements

In the administration of this Act [sections 2401 to 2420 of this Appendix], reporting requirements shall be so designed as to reduce the cost of reporting, recordkeeping, and export documentation required under this Act [sections 2401 to 2420 of this Appendix] to the extent feasible consistent with effective enforcement and compilation of useful trade statistics. Reporting, recordkeeping, and export documentation requirements shall be periodically reviewed and revised in the light of developments in the field of information technology.

(e) Simplification of regulations

The Secretary, in consultation with appropriate United States Government departments and agencies and with appropriate technical advisory committees established under section 5(h) [section 2404(h) of this Appendix], shall

review the regulations issued under this Act [sections 2401 to 2420 of this Appendix] and the commodity control list in order to determine how compliance with the provisions of this Act [sections 2401 to 2420 of this Appendix] can be facilitated by simplifying such regulations, by simplifying or clarifying such list, or by any other means.

(Pub. L. 96-72, § 12, Sept. 29, 1979, 93 Stat. 530.)

REFERENCES IN TEXT

The Export Control Act of 1949, referred to in subsec. (a), is act Feb. 26, 1949, ch. 11, 63 Stat. 7, as amended, which was classified to sections 2021 to 2032 of this Appendix and was terminated on Dec. 31, 1969, pursuant to the terms of that Act. For complete classification of this Act to the Code, see Tables.

The Export Administration Act of 1969, referred to in subsec. (a), is Pub. L. 91-184, Dec. 30, 1969, 83 Stat. 841, as amended, which was classified generally to sections 2401 to 2413 of this Appendix, and was terminated on Sept. 30, 1979, pursuant to the terms of that Act. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 2411, Pub. L. 91-184, § 12, Dec. 30, 1969, 83 Stat. 846, relating to the effect on the Act of Feb. 15, 1936 (49 Stat. 1140) and section 414 of the Mutual Security Act of 1934 (22 U.S.C. 1934) provisions of the Export Administration Act of 1969, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2405, 2413 of this title; title 22 section 2778; title 42 section 6274.

§ 2411a. Omitted

CODIFICATION

A prior section 2411a, Pub. L. 91-184, § 13, as added Pub. L. 95-52, title I, § 102, June 22, 1977, 91 Stat. 235, which authorized appropriations to carry out the purposes of the provisions of the Export Administration Act of 1969, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

§ 2412. Exemption from certain provisions relating to administrative procedure and judicial review

(a) Exemption

Except as provided in section 11(c)(2) [section 2410(c)(2) of this Appendix], the functions exercised under this Act [sections 2401 to 2420 of this Appendix] are excluded from the operation of sections 551, 553 through 559, and 701 through 706 of title 5, United States Code.

(b) Public participation

It is the intent of the Congress that, to the extent practicable, all regulations imposing controls on exports under this Act [sections 2401 to 2420 of this Appendix] be issued in proposed form with meaningful opportunity for public comment before taking effect. In cases where a regulation imposing controls under this Act [sections 2401 to 2420 of this Appendix] is issued with immediate effect, it is the intent of the Congress that meaningful opportunity for public comment also be provided and that the regulation be reissued in final form after public comments have been fully considered.

(Pub. L. 96-72, § 13, Sept. 29, 1979, 93 Stat. 531.)

PRIOR PROVISIONS

A prior section 2412, Pub. L. 91-184, § 14, formerly § 13, Dec. 30, 1969, 83 Stat. 847, renumbered Pub. L. 95-52, title I, § 102, June 22, 1977, 91 Stat. 235, which set forth the effective date of the Export Administration Act of 1969 as the date upon which the Export Control Act of 1949 expired, Dec. 31, 1969, expired on Sept. 30, 1979, and was omitted from the Code as terminated.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2413 of this Appendix.

§ 2413. Annual report

(a) Contents

Not later than December 31 of each year, the Secretary shall submit to the Congress a report on the administration of this Act [sections 2401 to 2420 of this Appendix] during the preceding fiscal year. All agencies shall cooperate fully with the Secretary in providing information for such report. Such report shall include detailed information with respect to—

(1) the implementation of the policies set forth in section 3 [section 2402 of this Appendix];

(2) general licensing activities under sections 5, 6, and 7 [sections 2404, 2405, and 2406 of this Appendix], and any changes in the exercise of the authorities contained in sections 5(a), 6(a), and 7(a) [sections 2404(a), 2405(a), and 2406(a) of this Appendix];

(3) the results of the review of United States policy toward individual countries pursuant to section 5(b) [section 2404(b) of this Appendix];

(4) the results, in as much detail as may be included consistent with the national security and the need to maintain the confidentiality of proprietary information, of the actions, including reviews and revisions of export controls maintained for national security purposes, required by section 5(c)(3) [section 2404(c)(3) of this Appendix];

(5) actions taken to carry out section 5(d) [section 2404(d) of this Appendix];

(6) changes in categories of items under export control referred to in section 5(e) [section 2404(e) of this Appendix];

(7) determinations of foreign availability made under section 5(f) [section 2404(f) of this Appendix], the criteria used to make such determinations, the removal of any export controls under such section, and any evidence demonstrating a need to impose export controls for national security purposes notwithstanding foreign availability;

(8) actions taken in compliance with section 5(f)(5) [section 2404(f)(5) of this Appendix];

(9) the operation of the indexing system under section 5(g) [section 2404(g) of this Appendix];

(10) consultations with the technical advisory committees established pursuant to section 5(h) [section 2404(h) of this Appendix], the use made of the advice rendered by such committees, and the contributions of such committees toward implementing the policies set forth in this Act [sections 2401 to 2420 of this Appendix];

(11) the effectiveness of export controls imposed under section 6 [section 2405 of this Appendix] in furthering the foreign policy of the United States;

(12) export controls and monitoring under section 7 [section 2406 of this Appendix];

(13) the information contained in the reports required by section 7(b)(2) [section 2406(b)(2) of this Appendix], together with an analysis of—

(A) the impact on the economy and world trade of shortages or increased prices for commodities subject to monitoring under this Act [sections 2401 to 2420 of this Appendix] or section 812 of the Agricultural Act of 1970 [7 U.S.C. 612c-3];

(B) the worldwide supply of such commodities; and

(C) actions being taken by other countries in response to such shortages or increased prices;

(14) actions taken by the President and the Secretary to carry out the antiboycott policies set forth in section 3(5) of this Act [section 2402(5) of this Appendix];

(15) organizational and procedural changes undertaken in furtherance of the policies set forth in this Act [sections 2401 to 2420 of this Appendix], including changes to increase the efficiency of the export licensing process and to fulfill the requirements of section 10 [section 2409 of this Appendix], including an analysis of the time required to process license applications, the number and disposition of export license applications taking more than 90 days to process, and an accounting of appeals received, court orders issued, and actions taken pursuant thereto under subsection (j) of such section;

(16) delegations of authority by the President as provided in section 4(e) of this Act [section 2403(e) of this Appendix];

(17) efforts to keep the business sector of the Nation informed with respect to policies and procedures adopted under this Act [sections 2401 to 2420 of this Appendix];

(18) any reviews undertaken in furtherance of the policies of this Act, including the results of the review required by section 12(d) [section 2411(d) of this Appendix], and any action taken, on the basis of the review required by section 12(e) [section 2411(e) of this Appendix], to simplify regulations issued under this Act [sections 2401 to 2420 of this Appendix];

(19) violations under section 11 [section 2410 of this Appendix] and enforcement activities under section 12 [section 2411 of this Appendix]; and

(20) the issuance of regulations under the authority of this Act [sections 2401 to 2420 of this Appendix], including an explanation of each case in which regulations were not issued in accordance with the first sentence of section 13(b) [section 2412(b) of this Appendix].

(b) Report on certain export controls

To the extent that the President determines that the policies set forth in section 3 of this Act [section 2402 of this Appendix] require the control of the export of goods and technology other than those subject to multilateral controls, or require more stringent controls than the multilateral controls, the President shall include in each annual report the reasons for the need to impose, or to continue to impose, such controls and the estimated domestic economic impact on the various industries affected by such controls.

(c) Report on negotiations

The President shall include in each annual report a detailed report on the progress of the negotiations required by section 5(i) [section 2404(i) of this Appendix], until such negotiations are concluded.

(Pub. L. 96-72, § 14, Sept. 29, 1979, 93 Stat. 532.)

PRIOR PROVISIONS

A prior section 2413, Pub. L. 91-184, § 15, formerly § 14, Dec. 30, 1969, 83 Stat. 847; Pub. L. 92-37, June 30, 1971, 85 Stat. 89; Pub. L. 92-150, Oct. 30, 1971, 85 Stat. 416; Pub. L. 92-284, Apr. 29, 1972, 86 Stat. 133; Pub. L. 92-412, title I, § 106, Aug. 29, 1972, 86 Stat. 646; Pub. L. 93-327, June 30, 1974, 88 Stat. 287; Pub. L. 93-372, Aug. 14, 1974, 88 Stat. 444; Pub. L. 93-500, § 13, Oct. 29, 1974, 88 Stat. 1557; renumbered and amended Pub. L. 95-52, title I, §§ 101, 102, June 22, 1977, 91 Stat. 235, providing for the termination of authority granted by the Export Administration Act of 1969 on Sept. 30, 1979, was omitted from the Code as terminated.

SPECIAL REPORT ON MULTINATIONAL EXPORT CONTROLS; SUBMISSION TO CONGRESS BY JUNE 22, 1978

Pub. L. 95-52, title I, § 117, June 22, 1977, 91 Stat. 242, which provided that not later than 12 months after June 22, 1977, the President submit to the Congress a special report on multilateral export controls in which the United States participates pursuant to the Export Administration Act of 1969 and the Mutual Defense Assistance Control Act of 1951, was omitted from the Code as executed.

REVIEW OF UNILATERAL AND MULTILATERAL EXPORT CONTROL LISTS; RESULTS TO BE REPORTED TO CONGRESS NOT LATER THAN DECEMBER 31, 1978

Pub. L. 95-52, title I, § 118, June 22, 1977, 91 Stat. 243, which provided that the Secretary of Commerce, in cooperation with appropriate Government departments and agencies and appropriate advisory committees, investigate United States export control lists, both unilateral and multilateral, and report the results of such investigation to Congress not later than Dec. 31, 1978, was omitted from the Code as executed.

TECHNOLOGY EXPORT STUDY; RESULTS TO BE REPORTED TO CONGRESS WITHIN ONE YEAR AFTER JUNE 22, 1977

Pub. L. 95-52, title I, § 119, June 22, 1977, 91 Stat. 243, which provided that the President, acting through the Secretary of Commerce, the Secretary of Labor, and the International Trade Commission, conduct a study of the domestic economic impact of exports from the United States of industrial technology whose export requires a license under the Export Administration Act of 1969 and that the results of such study be reported to Congress within one year after June 22, 1977, was omitted from the Code as executed.

REPORT ON TECHNICAL DATA TRANSFERS; REPORT TO CONGRESS NOT LATER THAN JUNE 22, 1978

Pub. L. 95-52, title I, § 120, June 22, 1977, 91 Stat. 243, which provided that the Secretary of Commerce conduct a study of the transfer of technical data and other information to any country to which exports are restricted for national security purposes and the problem of the export, by publications or any other means

of public dissemination, of technical data or other information from the United States, the export of which might prove detrimental to the national security or foreign policy of the United States and that the Secretary report not later than 12 months after June 22, 1977, to the Congress on the results of such study, was omitted from the Code as executed.

§ 2414. Regulatory authority

The President and the Secretary may issue such regulations as are necessary to carry out the provisions of this Act [sections 2401 to 2420 of this Appendix]. Any such regulations issued to carry out the provisions of section 5(a), 6(a), 7(a), or 8(b) [section 2404(a), 2405(a), 2406(a), or 2407(b) of this Appendix] may apply to the financing, transporting, or other servicing of exports and the participation therein by any person.

(Pub. L. 96–72, § 15, Sept. 29, 1979, 93 Stat. 533.)

§ 2415. Definitions

As used in this Act [sections 2401 to 2420 of this Appendix]—

(1) the term "person" includes the singular and the plural and any individual, partnership, corporation, or other form of association, including any government or agency thereof;

(2) the term "United States person" means any United States resident or national (other than an individual resident outside the United States and employed by other than a United States person), any domestic concern (including any permanent domestic establishment of any foreign concern) and any foreign subsidiary or affiliate (including any permanent foreign establishment) of any domestic concern which is controlled in fact by such domestic concern, as determined under regulations of the President;

(3) the term "good" means any article, material, supply or manufactured product, including inspection and test equipment, and excluding technical data;

(4) the term "technology" means the information and knowhow that can be used to design, produce, manufacture, utilize, or reconstruct goods, including computer software and technical data, but not the goods themselves; and

(5) the term "Secretary" means the Secretary of Commerce.

(Pub. L. 96–72, § 16, Sept. 29, 1979, 93 Stat. 533.)

§ 2416. Effect on other Acts

(a) In general

Nothing contained in this Act [sections 2401 to 2420 of this Appendix] shall be construed to modify, repeal, supersede, or otherwise affect the provisions of any other laws authorizing control over exports of any commodity.

(b) Coordination of controls

The authority granted to the President under this Act [sections 2401 to 2420 of this Appendix] shall be exercised in such manner as to achieve effective coordination with the authority exercised under section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(c) Civil aircraft equipment

Notwithstanding any other provision of law, any product (1) which is standard equipment, certified by the Federal Aviation Administration, in civil aircraft and is an integral part of such aircraft, and (2) which is to be exported to a country other than a controlled country, shall be subject to export controls exclusively under this Act [sections 2401 to 2420 of this Appendix]. Any such product shall not be subject to controls under section 38(b)(2) of the Arms Export Control Act [22 U.S.C. 2778(b)(2)]. For purposes of this subsection, the term "controlled country" means any country described in section 620(f) of the Foreign Assistance Act of 1961 [22 U.S.C. 2370(f)].

(d) Nonproliferation controls

(1) Nothing in section 5 or 6 of this Act [section 2404 or 2405 of this Appendix] shall be construed to supersede the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978 [42 U.S.C. 2139a(b)].

(2) With respect to any export license application which, under the procedures published by the President pursuant to section 309(c) of the Nuclear Non-Proliferation Act of 1978 [42 U.S.C. 2139a(b)], is referred to the Subgroup on Nuclear Export Coordination or other interagency group, the provisions of section 10 of this Act [section 2409 of this Appendix] shall apply with respect to such license application only to the extent that they are consistent with such published procedures, except that if the processing of any such application under such procedures is not completed within 180 days after the receipt of the application by the Secretary, the applicant shall have the rights of appeal and court action provided in section 10(j) of this Act [section 2409(j) of this Appendix].

(e) Termination of other authority

On October 1, 1979, the Mutual Defense Assistance Control Act of 1951 (22 U.S.C. 1611–1613d), is superseded.

(Pub. L. 96–72, § 17, Sept. 29, 1979, 93 Stat. 534.)

REFERENCES IN TEXT

The Mutual Defense Assistance Control Act of 1951, referred to in subsec. (e), is act Oct. 26, 1951, ch. 575, 65 Stat. 644, as amended, which was classified generally to chapter 20A (§ 1611 et seq.) of Title 22, Foreign Relations and Intercourse, prior to its supersedure by subsec. (e) of this section. For complete classification of this Act to the Code, see Tables.

§ 2417. Authorization of appropriations

(a) Requirement of authorizing legislation

Notwithstanding any other provision of law, no appropriation shall be made under any law to the Department of Commerce for expenses to carry out the purposes of this Act [sections 2401 to 2420 of this Appendix] unless previously and specifically authorized by law.

(b) Authorization

There are authorized to be appropriated to the Department of Commerce to carry out the purposes of this Act [sections 2401 to 2420 of this Appendix]—

(1) $8,000,000 for each of the fiscal years 1980 and 1981, of which $1,250,000 shall be available for each such fiscal year only for purposes of carrying out foreign availability assessments pursuant to section 5(f)(5) [section 2404(f)(5) of this Appendix], and

(2) such additional amounts, for each such fiscal year, as may be necessary for increases in salary, pay, retirement, other employee benefits authorized by law, and other nondiscretionary costs.

(Pub. L. 96–72, § 18, Sept. 29, 1979, 93 Stat. 534.)

§ 2418. Effective date

This Act [sections 2401 to 2420 of this Appendix] shall take effect upon the expiration of the Export Administration Act of 1969 [former sections 2401 to 2413 of this Appendix].

(Pub. L. 96–72, § 19(a), Sept. 29, 1979, 93 Stat. 535.)

References in Text

The Export Administration Act of 1969, referred to in text, is Pub. L. 91–184, Dec. 30, 1969, 83 Stat. 841, as amended, which was classified generally to sections 2401 to 2413 of this Appendix, and was terminated on Sept. 30, 1979 pursuant to the terms of that Act. For complete classification of this Act to the Code, see Tables.

§ 2419. Termination date

The authority granted by this Act [sections 2401 to 2420 of this Appendix] terminates on September 30, 1983, or upon any prior date which the President by proclamation may designate.

(Pub. L. 96–72, § 20, Sept. 29, 1979, 93 Stat. 535.)

§ 2420. Savings provisions

(a) In general

All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under the Export Control Act of 1949 [former sections 2021 to 2032 of this Appendix] or the Export Administration Act of 1969 [former sections 2401 to 2413 of this Appendix] and which are in effect at the time this Act takes effect [September 30, 1979] shall continue in effect according to their terms until modified, superseded, set aside, or revoked under this Act [sections 2401 to 2420 of this Appendix].

(b) Administrative proceedings

This Act [sections 2401 to 2420 of this Appendix] shall not apply to any administrative proceedings commenced or any application for a license made, under the Export Administration Act of 1969 [former sections 2401 to 2413 of this Appendix], which is pending at the time this Act takes effect [September 30, 1979].

(Pub. L. 96–72, § 21, Sept. 29, 1979, 93 Stat. 535.)

References in Text

The Export Control Act of 1949, referred to in subsec. (a), is act Feb. 26, 1949, ch. 11, 63 Stat. 7, as amended, which was classified to sections 2021 to 2032 of this Appendix and was terminated on Dec. 31, 1969, pursuant to the terms of that Act. For complete classification of this Act to the Code, see Tables.

The Export Administration Act of 1969, referred to in text, is Pub. L. 91–184, Dec. 30, 1969, 83 Stat. 841, as amended, which was classified generally to sections 2401 to 2413 of this Appendix, and was terminated on Sept. 30, 1979 pursuant to the terms of that Act. For complete classification of this Act to the Code, see Tables.

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